



**REPORT OF  
THE COMMISSIONER  
FOR  
SCHEDULED CASTES  
AND SCHEDULED TRIBES**

**TWENTYNINTH REPORT  
1987—89**



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अनुसूचित जातियों तथा अनुसूचित जनजातियों के आयुक्त  
Commissioner for Sch. Castes and Sch. Tribes

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THE PRESIDENT OF INDIA  
NEW DELHI

(THROUGH THE UNION MINISTER OF STATE FOR WELFARE)

I am presenting herewith the Twentyninth Report on the condition of the Scheduled Castes and Scheduled Tribes under Article 338 of the Constitution for the year 1987-89. In the last report, which was my first report, I had reviewed the situation of the Scheduled Castes and Scheduled Tribes in broad terms. In that report one major aspect which came to the fore was that a dualistic system is getting established in our country. The modern organised sector comprises the upper segment of this system while the traditional unorganised sector comprises the lower segment. Consequently even amongst the Scheduled Castes and Scheduled Tribes, two different segments are getting established exactly in the same fashion. The modern organised sector is the leading sector of our developing economy. Therefore all eyes are set on it and everyone is looking at it with fond hope. It was in this context that I had made extensive recommendations in the earlier report so to ensure that the members of the Scheduled Castes and Scheduled Tribes get an equal opportunity and honourable position in both the segments, particularly in the organised modern sector. The real partnership in the grand procession of development cannot remain confined only to reservations in services but must extend to all segments of national life. Only then the system can truly be considered to imbibe the spirit of the Constitution implicit in the protective provisions and the right to equality.

2. The irony, however, is that such a dualistic system is by its very nature inequitable. Therefore if we see the above plea for equity and justice in the broader context of national economy, it will mean a plea merely for sharing of non-justified benefits of an inequitable system. Secondly, even after the policy of equitable sharing is implemented with full responsibility and honesty, it will benefit only a small segment amongst the weaker sections of our society. And here is an extremely regrettable aspect of this scheme. If the system continues as it is, the burden of deprivation and exploitation will continue to increase and will, to a large extent, fall on the members of the same community, bulk of whom happen to be located in the lowest stratum of our system. In this way, a highly anomalous situation is being created. This partnership in injustice in the name of justice acquires appearance of justice. But by the same token in such a milieu, not only

ignoring broader issues of justice and equity but even opposing the same also tend to be justified. Therefore unless the question of equity and justice is considered from the perception of the people located at the lowest rung of our society, which accounts for bulk of the members of the Scheduled Castes and Scheduled Tribes excepting a small section who have joined the organised sector, the safeguards in the Constitution for these communities will remain, more or less, meaningless.

3. The life of the vast majority of our people is linked with three elements, viz., the right over resources, the right over means of production and the entitlement for labour. These aspects unfortunately have either not been properly discussed or, in case there is some discussion, it is mostly superficial. The reason is that the moment such issues are seriously considered, the very foundation of the vested interests, which are flourishing in the name of modernity, progress and development, gets shaken. But these are the questions which are crucial for the welfare of the members of the Scheduled Castes and Scheduled Tribes. And what is more, they are also crucial for the quality of national life, basic principles and human values. It is in this context that I had decided to undertake a special review of the national scene with regard to these three elements. The present report and the previous one taken together in a way make for a comprehensive frame. This frame can provide the basis for a life of honour and dignity for all members of the Scheduled Castes and the Scheduled Tribes. Moreover the frame can also become the frame for establishment of a social order imbued truly with the ideals of equity and justice.

#### *The Three-tiers in National Life*

4. The situation in our country with regard to the establishment of an appropriate system and suitable milieu for enabling the common man to lead his life with honour and dignity is rather unhappy. The polarisation in our national economy is becoming increasingly sharper. On the one end we have the carefree setting of the modern organised sector. The moment a person steps in this sector, he is free from all worries about his ordinary living for all times. In that worryless life, the only worries are how to retain one's position, how to get as large a share in the comforts and luxury-goods characteristic of that sector and how to somehow move along the high tide of so-called development. On the other extreme is located the unorganised traditional sector. The question before the ordinary people here is that of just two square meals. The only wish of those people, however, in this sector who command the resources and also those who understand the new world, is somehow to join the modern sector, or else to amass similar artifacts of comforts and luxury there itself. Therefore, the general scenario in this sector is that of strife, loot and raw struggle for existence.

5. In this milieu, the growing centralisation in our economy is adding fuel to fire. Whatever is left with the ordinary people is being snatched away on the strength of law or sheer use of force and money power. Whatever is being snatched away from this side is getting accumulated at the other end. In this way not only a dualist but a three-tier structure is getting consolidated comprising, India, Bharat and 'Hindustanva'. The bulk of the members of the Scheduled Castes and Scheduled Tribes are included in this lowest tier of Hindustanva.

6. It is clear that this process in our national life is not in keeping with the intention of our Constitution. It is also against the declared principles. But then how is it happening? I have tried to look into this question in some detail with a view to find a possible solution. There are two basic aspects—one concerns the texture of our legal structure and the other is related to the paradigm of development. So far as the paradigm of development is concerned, we have accepted the path adopted by the western countries as the ideal. Moreover, in a hurry for development

we have accepted the questionable premise of "development first" and given social equity a secondary position. In this approach an important fact of the global system was overlooked that the "dustbin" of a third world was a necessary concomitant of the process of development in the first and the second worlds. In the same continuation, the third world now requires a 'dustbin' of "fourth world". Today in our country Hindustanva has become that very dustbin of development.

### *Dissonance between Law and Constitution*

7. The present system is patently inequitous. But unfortunately our legal structure has also proved to be its compeer. The warp and weft of our legal system was broadly set during the British period. The basic premises of the system established by the British were those of their own society and its objective was to strengthen the foundations of their empire. The people were subject and the system was a symbol of the Raj. After independence we prepared and adopt a Constitution dedicated to the establishment of a socialistic society based on our own traditions and basic human values. But the structure of the system, over which this crown of Constitution was placed, was totally dissonant with its basic spirit. This dissonance not only continued in the coming years but the situation became still worse. Firstly, the nascent ruling elite came to relish the old system. Secondly, in the hurry for development the incongruities were first ignored and later on they were accepted even as necessary for the maintenance and advancement of the new system. There was yet another important reason for the continuance of the incongruous situation. The law and the rules are concrete and functional while values are abstract. The latter are generally a good subject of thought and discussion which by itself can be a matter of satisfaction. Consequently big mountains of violation of Constitution and human rights could remain hidden behind the small straws of the legal frame.

### *Right to Life*

8. The most sacred and primary amongst all human rights is the right to life. The right to life does not only mean the right to bare animal-level subsistence; it really means right to live with human dignity. And two crucial elements for a life with dignity are personal liberty and adequate means of livelihood. The form of these elements in real situations can be quite different depending on the specific economic and social situation. For example, in the modern sector they comprise what are known as the fundamental rights. But when it comes to the tribal people, who are located on the other end of the spectrum in the traditional sector, these formal principles in the present context have no meaning. In their situation a self-governing system based on their own tradition and within the understanding of the ordinary people is essential for enjoyment of these rights in the real sense.

9. The situation in relation to appropriate means of livelihood is very complex. Moreover numerous anomalies have plagued the system. So far as the adequate means of livelihood in the organised sector is concerned the formal form is dominant. Every member of this sector has a specified position and whatever the role of that person, irrespective of its utility or non-utility for life he not only can claim due entitlement just by virtue of the membership of the organised sector but can also openly claim entitlements which are not really justified. But in the case of unorganised sector no body is sure about what a member of that sector will finally get. And the situation of each member in the sector may be quite different. Nevertheless it can be said that broadly command over resources, ownership of means of production and due entitlement for labour are three such elements which together determine the situation of an individual and also the community with regard to the appropriate means of livelihood.

10. Thus, there are five elements which are necessary for life with dignity, self-management at the community level, command over resources by the community, ownership of means of production by the worker, equitable entitlement of labour and personal liberty. These are the basic rights for the human society. These are also the soul of a democratic system. These values have been enshrined in our Constitution in unequivocal terms.

*....And Its Denial*

11. Even though the position about the right to life in the Constitution is crystal clear, yet so far as the right to life of the common man is concerned, it is not only being ignored in practice but is being blatantly violated. The main reason for this situation is that during the British period the natural resources were accorded the status of property under the law rather than being recognised as the basis of life of the people. The irony is that even after the right of property was removed from the list of fundamental rights and in the face of clear enunciation by the Courts about the real intent of the right to life enshrined in the Constitution, the legal frame in that regard in practice remained unchanged in its original colonial form. That is why there is a direct clash at almost every step in the national life between the Constitutional and human right of right to life of the common people and the legal right of property of the more powerful groups. It can be said that in the inequitable distribution of resources during the British period the state and a group of selected people along with the state become the owners of all natural resources including land. But by the same token the common man, who was using those resources for making a living through the ages was deprived of his natural right to make a living from them. This process unfortunately has become still more stronger after independence.

12. In view of this denial of the basic right to life, a big question arises about the nature of responsibility of the state itself. After all in our Constitution the State has been given a special responsibility in relation to social justice. Then how is this all happening? To answer this question we will have to review the different roles of the State in the complex modern situation and the priorities adopted by the State in that regard. The State can broadly be said to have three primary responsibilities, viz., law and order, protection and development. In the anxiety to maintain order and in the hurry for development as also in the dazzle of its glitter, the dark lanes of the State's responsibility for protection of the poor, particularly the Scheduled Castes and Scheduled Tribes, have been often forgotten. Moreover there is no hesitation in supporting the vested interests entrenched in the old as well as the new structures under the cover of policies, principles and laws and even in striking against those whom the State is expected to protect. In some areas, it appears as if law, Constitution, human rights and state's responsibility are all non-existent. This is the biggest irony of our national life which I have tried to present in this report.

13. This phenomenon is an integral part of the inhuman processes of deprivation and destitution which has been continuing for ages. But its scope became much wider and its intensity much higher during the British period. A careful review of the present situation clearly brings out five levels of deprivation, viz.,—(i) non-recognition of rights over resources and restrictions on their use, (ii) Alienation of worker from the means of production, (iii) denial of due entitlement of labour, (iv) bartering of personal liberty and finally (v) the psychological state of accepting deprivation and destitution as justified and proper and demise of self-respect and dignity. It is unfortunate that the processes of deprivation have not only continued at all these five levels throughout our national life, with the bare exception of the organised sector, but at many places it has become much more intense. It will be necessary to start our review with the last level.

*Social Prestige and Dignity*

14. The honour and dignity of a person is dependent on his work, his right over means of production and his right to manage the system. The condition of the members of the Scheduled Castes and Scheduled Tribes on all these counts was deplorable from the very beginning. Hard work fell in their share while command over resources was enjoyed by others. But after independence these people were rendered still more helpless and vulnerable in the face of unholy collusion between the system and the more powerful groups. Firstly, whatever means of production had remained in their hands are also gradually slipping through their fingers. Secondly, there is also a state of near lawlessness in the villages. In this milieu, the remaining resources of the village community are being commandeered in some cases by the stronger people of the village in some other cases by small and big companies and finally in some cases by the State itself ignoring the fact of dependence of the people on those resources for their living and their traditional rights. Who cares and who knows where these people should go? In this raw struggle for existence prestige and dignity for the ordinary people are at best images of a dream world.

15. The biggest irony with regard to dignity and prestige of a people in our country is that the condition of the tribal communities, who are most conscious about self-respect and honour, is the worst. These communities have become completely helpless in the face of the omnipotent system on account of the 'criminalisation' of their social and economic system itself, denial of their rights over resources and non-recognition of their traditional self-governing systems. The forests are the property of the State; therefore it is an offence for the tribal, who has been living in those very forests for the ages, to make a living from these forests. His very presence in the forest is against the law. If a tribal enters the forests with his bow and arrows, it is an offence. If his cattle as usual graze in the forest, they are taken to a kine house. If he takes his traditional brew after worshipping his Gods or in social functions according to his tradition he still becomes a law breaker. He is branded as an offender in all matters concerning his social and economic life only because the law is against him. The criminalisation of the entire communities in the tribal areas is the darkest blot on the liberal tradition of our country.

16. And the saddest thing is that all this has happened and is happening in the name of principles, claiming authority from the Constitution and the law. That is not all. This is being done by a system, which considers itself to be a symbol of justice, rationality and modernity. Those who have been given the responsibility under the Constitution for correcting this anomalous situation have almost no realisation about that responsibility. The first attempt of the System ordinarily is to assert its own position as right and to prove that the others are on the wrong. It is expected that the tribal society should change and adapt itself in accordance with the frame of the modern system. And finally, an attempt is made to convince the people that this is what development really is!

17. Thus, firstly no action has been taken to correct this basic anomaly and even if some action is initiated, one can never be sure as to where it might get stuck. The result is that today there is a state of confrontation in almost all the tribal areas. In this connection I have reviewed in some detail the Excise Policy in the tribal areas. There are clear policy guidelines of the Central Government in this matter. But even after 16 years of their issue they have not been adopted in full by any State so far. Even where they have been adopted, something or the other gets incorporated at some stage of implementation or the other such that the basic spirit of those guidelines cannot be realised. Moreover when people demand implementation of the policy guidelines, they have to face the wrath of the system.

18. I have discussed the issue of Excise Policy in some detail because this issue touches the personal and social life of every tribal. In this case even when a tribal strictly follows the social norms of his community he breaks the law, he is an offender before the law and legal action can be taken against him. Can there be a more regrettable situation than this? Any law in the tribal areas, which makes the social tradition of the tribal people a criminal act, is against the spirit of the Constitution. If social prestige and personal dignity in the tribal areas are to be upheld all these legal anomalies must be done away with immediately.

### *Entitlement of the Common Man*

19. The biggest question in relation to the right to life is the entitlement of the common man for his labour input. What can be the meaning of honour and what can dignity signify to a hungry person? The present situation in this regard is unjust. The members of the organised sector first take away from the gross national product what they consider is due to them on the basis of highly inflated and arbitrary entitlements. The members of the unorganised sector have to be content with whatever is left thereafter. The fact is that not even proper valuation has been made of the work of ordinary labourers outside the organised sector including the farmer. It is an irony that the agricultural labourer in our agricultural country whose work is the most skilled, the most arduous, and whose working conditions are the most difficult has been graded as an unskilled worker. This is also the case with other workers in the unorganised sector. Their skills are deemed to be 'non-skills' and their knowledge as 'ignorance'. And all the skilled workers in the traditional sector are gradually becoming a motley crowd of unskilled people, a process which was set in motion as a part of imperial design during the British period. In the case of most of these workers, deprivation has reached the ignominious level of 'biological exploitation', which is not even alluded to.

20. I have referred to in my last report the unconstitutionality of the dualistic system in the determination of wages and salaries for the organised and the unorganised sectors. But this serious constitutional issue has not been even discussed so far in any forum. This duality is at the root of inequity in our country. If the question of justice for the common man is considered in the real sense, then the first step will inevitably have to be equitable determination of wages of the agricultural labourer. It will directly lead to a substantial rise in the price of agricultural commodities. In the end, it will boost the entitlements of all workers in the unorganised sector. Thus a new relationship will be established between the organised and the unorganised. The natural outcome of this process will be that the entitlements of people belonging to the organised sector at the other end will be significantly reduced compared to what they are enjoying today. The members of the organised sector will not easily accept this new deal. But this simple logic and this stark reality about injustice in our national life have to be got accepted by them whether they like it or not. Or else, how can the common man expect to get justice without changing such glaring unjust relationships in our national economy?

21. This is the plain reality about our economic structure. If this reality is ignored it will not be possible even to present the correct analysis of our national problems. And if the disease itself is not correctly diagnosed how can we expect a real cure? For example, from analysis presented in the report it is clear that there is no unemployment in our country. The reality is the so-called unemployment is a part of a big conspiracy by the vested interests which has only one objective, that is, to extract maximum work from the ordinary man with a minimal wage which may be just sufficient for his bare physical survival so that he can contribute his bit until his limbs can move and in the end he is obliged to withdraw from the stage after providing a

"substitute". It is here that deprivation in our country descends to the abysmal level of biological exploitation.

22. The members of the Scheduled Castes comprise a substantial segment amongst the workers in the unorganised sector. In the present situation when the members of the Scheduled Castes do not have anything which they can call their own except their labour and their skills, their struggle for entitlement for their labour is the real struggle for justice; it is also a struggle for the right to life. The first step for social justice in this context has to be due recognition of the skills of the agricultural labourers and conferral on him the status of skilled worker. Moreover his wages should be fixed in accordance with the principles accepted for organised sector such that his wife and children are not forced to go out of their homes in search of work and as a respectable citizen he can also maintain his family with his own earnings.

### *Rights over Means of Production*

23. Most of the members of the Scheduled Castes and Scheduled Tribes are dependent, in some way or the other, on agriculture. But their condition with regard to the rights over land everywhere is very regrettable. The biggest muddle in this regard has been in the tribal areas, which is continuing even now. Firstly, in many areas there are no authentic papers. Therefore, the position about land such as the size of holding, its precise location, is not properly recorded. Secondly, the laws are much too intricate which are beyond the understanding of the people. According to the present law, any land which is not recorded in the name of an individual is deemed to belong to the state. Therefore the government can do whatever it likes with regard to such lands. On the other hand the ownership, in a way, is bestowed automatically in the favour of a person the moment his name is entered in the records in an appropriate column. The outsiders have taken full advantage of these legal stipulations. Today not only the record is against the people, the entire system is against them. The correct information about cultivation, ownership, etc., concerning land is available only in the village, yet all disputes about land are decided in Courts outside. It is well-known that a simple person has no hope of getting justice there. But he cannot do anything, he is utterly helpless.

24. In many areas, particularly where industrial complexes are being established, there is a state of near lawlessness. The case of Sonbhadra in U.P. is extremely regrettable; the area is witnessing open loot in the name of settlement. The instructions of government and even decisions of Courts are unable to protect the tribal lands. Unless there is a basic change in the present system such that all matters concerning land are decided in the open, in the presence of village people, the tribal people cannot get justice. To leave the entire tribal community at the mercy of an outside formal system in matters concerning land, which is the only basis of their life, is patently unjust and in violation of Constitutional safeguards. A people's movement has been launched on this issue in Sonbhadra. The demands of the people in this vital matter must be conceded. In fact, that proposition should be accepted as the norm for preparation and maintenance of land records for all tribal areas in the country.

25. The most basic question about land concerns entitlement of the tiller of land. Even though the right of the tiller on the land the tills has been accepted in principle in our country, yet in reality his position is the weakest. In my previous report, I had made extensive recommendations with a view to give the principle of 'land to the tiller' a real form. In this context, unfortunately the position at the moment is that it is not even certain that

the tiller of the land can continue to till the land, the question of bestowal of ownership rights remains a far cry. In some states, it is almost impossible even to get the fact of cultivation by a tenant entered in government records. I have given two examples in this regard—one from Bihar (Sole Daltanganj) and another from Andhra Pradesh (Pulimamidi). In both these cases the people, most of whom belong to Scheduled Castes, are cultivating the land but their names do not find a place in the record. They have asked the government to provide protection for their cultivation about which the concerned governments have not taken a clear stand. Therefore, they have resolved to protect for themselves their basic right to till the land.

26. In these cases the issues concerning land record and cultivation appear to be very simple. But some of them involve basic questions. If a person is cultivating a piece of land, then should this fact be not recorded in government papers? Whatever is on the ground must get reflected in the record in some way or the other. If even this simple thing is not being done as a conscious policy in our system it has only one implication. An easy way has been found to ignore the due entitlement on land of the poor people. This position may be legal, but it cannot be said to be just and cannot be accepted as being in accordance with the spirit of our Constitution. Here lack of consonance between the law, justice and Constitution become glaring. And this is not the story of Sole or Pulimamidi alone. Bulk of agricultural land throughout the country is in the clutches of zamindars—absentee or otherwise. The person who tills that land and subsists on it has no relationship with it under the law.

27. All struggles concerning cultivation of land are basically a conflict between two rights. On the one side is the right to life and on the other the right to property. The right to life is basic and much higher than the right to property. Where a person is earning a living by cultivating the land, its ownership cannot be bestowed on him straight away for some reasons, the minimum which can be expected from the government is to ensure that he continues to remain in possession of that land and his right to make a living from it is effectively protected.

28. The first step for protecting the right to life related to land will have to be to ensure that, whatever may be the law, or even if the law is silent on this issue, the person who is cultivating a piece of land continues to be in possession of that land. This principle should be openly promulgated and the fact of possession through cultivation should be entered in government records. Moreover if a zamindar tries to evict a person ignoring this right, the government has the responsibility to provide full protection to the victim. And if a government cannot protect this basic right, no one can take away the right of an individual for self-defence. This is the message of our Constitution.

### ***Bonded Labour***

29. The worst disregard of the right to life is being perpetrated in the case of bonded labourers. Their condition is extremely pitiable notwithstanding governmental statistics and comprehensive plans for their liberation and relief. The coffee plantations of Tamil Nadu are gold mines for their owners but the tribal, who nurtures them through his sweat and blood, is a 'prisoner' there. The limbs of labourers working for big landlords in Daltanganj and Champaran are chained in lieu of five kathas (measures) of agricultural land. In many areas on the border of U.P. & M.P., working in the stone quarries is the destiny of the people;

they can lose their life should they dare to refuse to go to work; their limbs can be crushed; beating is an ordinary thing. Such oppression and such exploitation even after 14 years of the enactment of the law for liberation of bonded labourers, which is in the knowledge of administration, about which even sensitive social workers out of sheer helplessness cannot but turn their face saying 'what to do?' is abominable. It is an open disregard of human rights, which is not merely a matter of regret, but is a matter of national shame for all of us.

30. It is clear that there is one basic defect in the policy about liberation of bonded labourers. The plan of liberation of the bonded labourer, instead of cutting the fetters of his slavery, cuts him away from the support of his life. What is necessary is to cut the shackles of slavery of the bonded labourer besides ensuring that in doing so he is not alienated from his life's support. He has a right on the life support system or the enterprise in which he may be engaged. This fundamental right of his must be protected at any cost, yet the inhuman bondage must also be snapped forthwith. But even this will not be enough. The owners, who are responsible for this crime against humanity, should be externed from those establishments and the labourers must be given the ownership right on the same. This will be the real liberation of bonded labourers.

### *Right over Resources*

31. The primary resources other than agriculture in the traditional economy are forests, pastures (waste land and water) on which the ordinary people depend for their living. The wrong entitlements over resources of all descriptions started getting established during the British period. It was in that period that the intimate relationship between the resources and the local community which was like that between the mother and the child, was ended and the State acquired monopoly rights thereon. This Colonial process of centralisation has unfortunately got further reinforced under the tutelage of the new paradigm of development which has been adopted in our country after independence. The full implications of this colonial-developmental process are becoming clearer only now. Everywhere the life support system of the local community and the common man at the moment is being snatched away by the abstruse state institutions and big people without any qualms of conscience. In this situation, the people are engaged in a fierce struggle of their right to life. But the system is branding their current use of these resources as illegal and is driving them away taking undue advantage of its authority.

32. The first fundamental change which was effected in this process related to forests. In the new frame, the symbiotic relationship between the forests and the forest dwellers was not recognised and the forests became property of the State. After the state acquired monopoly rights over the forests, a formal system was established for their management which gradually became increasingly comprehensive and also strong. The biggest irony of this change was that the forest-dweller who has a life-long relationship with the forests—which are their very homes, their religion, their culture and their everything—was conspicuous by its absence in that frame. In this formal structure, which recognises only administrative and market relations, an all-out effort has been made to see that these life-long mother-child relationships are transformed into market relationships. How can this be possible? It is on account of this basic lack of understanding, that there is state of confrontation and regime of destruction in almost all the tribal areas which in final analysis means great injustice to the tribal people.

33. The British enacted the Indian Forest Act with a view to acquire formal control over the forests. At the time of reservation of forests, legal formalities were no doubt complied with, but there was no question of people getting justice. Most of the tribal people were forcibly evicted from their homes. The memory of that forcible eviction now remains only in their folk tales. Whosoever could do, prepared agricultural land outside the forests. Even then their living relationship with the forests still continued. Those communities, which are totally dependent on forests have not been able to come over this great tragedy even now. The primitive tribal communities and the shifting cultivators in many areas are still engaged in a struggle of life and death. Similarly, the right to life of the nomadic communities has also been disregarded. Their problems have so far remained altogether unnoticed.

34. It is clear that the right to life at the individual level and the human right of maintaining the identity at the community level in the case of the tribal people have been ignored in the Indian Forest Act. Therefore, this law is not in consonance with the spirit of our Constitution. But since the state itself was one party in this deal, there was no change in it even after the Constitution was adopted and the situation remains as it was before it. In this way, the Constitutional provisions for protection of tribal people as also the human rights have been ignored in the system of management of forests adopted in our country. This is also the most sore spot for the tribal people; this is also the most pathetic tale about the condition of these communities.

35. All the tribal areas were incorporated after independence in larger state units. In this process, no special attention was paid to the existing administrative arrangements and everywhere the system of the larger unit as it is was gradually extended to the tribal areas. Wherever forests were not reserved, the process of reservation was started. The private forests were taken over by the State. In this way, all special features of the earlier management systems evolved in keeping with the local traditions stood derecognised in the new system. But people's life does not automatically change simply because a new system may have been adopted. Therefore, numerous anomalies arose in the field and people really could not accept the new system from the core of their hearts. Consequently there is confrontation in many areas on this count.

36. The process of reservation of forests after independence was largely pursued in a routine fashion. In some cases, mere formality was observed just for the sake of it and even the fact that some people were living in the forests was not taken note of. In this way, the spirit of the law itself was violated. For example, in some cases of Jagirdari forests the original inhabitants were deemed to be encroachers without any enquiry as soon as these forests were taken over by the state. In some cases, no lines were drawn on the spot at the time of reservation. So the people could not know as to which land was being reserved. In some cases, the officer did not visit the spot, yet recommended reservation of the area. Similarly, there were a variety of local practices in each area, like *warkas* in Thane, *dali* in Raigarh and green manure leases in Karnataka, etc., which were not even looked at. Therefore, the old legal arrangements became illegal in many areas just with the passage of new law without any consideration and without any thought. And the tribal became a law breaker.

37. This reservation of forests predictably failed to protect the forests. Firstly, the internal pressure on forests has been rising incessantly on account of growing population and increasing needs of the people. But the biggest devastation was caused by external pressures.

Extensive plantations of mono-culture species after clearing the natural forests in the name of scientific management, establishment of tea, coffee and cardamom plantations, leases of forests produce at throw away prices in the name of promoting industries and establishment of industrial and mining complexes in the name of development, construction of highways, heavy influx of outsiders, eviction of tribals, supply of forest produce for meeting new demands, everything in the end proved to be a big burden on the forests. Consequently, there was ruthless destruction of the forests. The worst effect of this mindless destruction has been on the life of the tribal people. The very basis of their life is getting destroyed. But unfortunately no attention has been paid to this aspect of denudation of forests. For example, food production in our country has increased manifold, but how much loss have the tribal communities sustained in terms of non-availability of food articles from the forests due to their destruction does not find a place in national accounting. In all campaigns for the protection of forests the real culprit, who has destroyed them for quick gains and who continues to destroy them even now, is left out and the full wrath of the system falls on the tribal, who is already under tremendous pressure.

38. While discussing management of forests, besides the issues concerning the life of the people, those relating to environment and national development cannot be forgotten. But a direct consequence of non-recognition of even the existence of the community and not associating it in the management of forests, the position of forests has become very vulnerable. They are like that public property which has no one to look after and, if at all there is one, he too is far away from the scene and has no significant role to play in its protection. It is true that the internal pressure on forests has increased. But the tribal after all brings only a pole or two for constructing his hut, a small branch for making his plough and dead wood for lighting the fire to protect him from worms and insects, wild animals as also from cold during the winter. Nowhere he has built grand mansions. When the tribal clears the forest and cultivates forest land it is under compulsion of his circumstances. If he can be provided an alternative, he will happily accept the same.

39. The main reason for the depletion of our resources is the growing inequality and the rising tide of consumerism. But unfortunately these facets are not even alluded to anywhere. Therefore, the greatest need today is to put stringent check on the consumerist lifestyle and ensure equitable entitlement in the use of natural resources. For achieving this, it will be necessary that all those vested interests, who have entered into forests for quick gains and establishing big *jagirs*, are ruthlessly suppressed. All plantations small and big, legal and illegal for example those which have mushroomed in Karnataka, should be taken over by the government and handed over to the labourers. If a poor person gets due entitlement over the natural resources, he will be relieved of the problems of the day; only then he will be in a position to think for tomorrow; in that frame he will become the greatest friend of environment. There are some good experiments of partnership of the people in protection and development of forests from West Bengal which are worth emulations. In many areas, people are taking initiative on their own, which deserves to be strongly supported.

#### *Minor Forest Produce*

40. The minor forest produce has an important place with regard to people's partnership in forestry. I had recommended in my previous report that the people should atleast be given full rights over the minor forest produce. The rights presently claimed by the government on minor forest produce even with reference to the provisions of the Indian Forest

Act, are not legal and royalty levied thereon is unethical. The declarations of the Governments of Madhya Pradesh and Bihar last year recognising the tribal people as owners of minor forest produce instead of more labourers engaged in collecting the same, was the first major step towards ending the historical injustice with regard to forest against the tribal people. It is, however, a matter of deep regret that regressive forces got active immediately after this declaration in Madhya Pradesh. And today the situation is that even this great decision is being denied. This regressive step is a mockery of the entire Constitutional ground plan in which the State has been given with great confidence the responsibility of protection of the interests of the tribal people. Will the Governor and the President, keeping aside all sorts of formalities in this regard, ensure that this just decision is not negated and that the subsequent regressive decision does not become a blot in the history of our social justice.

### *Wild Life*

41. A highly anomalous situation has also arisen in the management of wild life on account of ignoring certain basic facts about the tribal scene such as the tribal people and the wild animals have co-existed reasonably well from times immemorial, that wild life has not been destroyed by bows and arrows and that the real culprit responsible for their destruction is the outsider. Consequently unnecessary restrictions are being placed on the activities of the tribal people and in many cases they are being forced to move out of their homes. Their plea is that they have been living with the tigers through the ages and they can still live with them quite well. But nobody is prepared to listen to them. In many areas their economy has been greatly damaged through measures which are not legal. There is open violation of their right to life, which is not in keeping with the spirit of our Constitution. There is an urgent need for serious review in all these cases both at the level of law and also in terms of actual practice.

### *Need for a Permanent Solution*

42. The management of forests unfortunately is being done on a purely formal basis instead of seeking participation of the people. There is no doubt a reference about people's participation in management in the new forest policy. But even in respect of implementation of this idea, market forces and formal relations are being relied upon and accepted as the basis. Therefore that decision at the policy level in practice becomes meaningless. In this situation, the conflict between the government and the people has increased and is continuing to increase. There is a state of confrontation between the people and the state almost in the whole of middle India; many of these areas are outside the ambit of the authority of forest departments. The situation everywhere has been deteriorating only because (i) no attention has been paid even to the fully justified demands of the people, (ii) attempts have been made to superimpose the law unilaterally, and (iii) the behaviour of the departmental officers has been repressive. In the end, either the people themselves have risen in revolt against the administration or extremists have taken up the cudgels on their behalf. It is necessary that satisfactory answers are found to the basic questions of the people such as their assertion that the forests are their's and their very life depends on them. It is regretted that instead of attending to the basic questions, the state of confrontation is sought to be resolved by use of force treating the unrest merely as an expression of extremist activity. This will not do. It is necessary that the entire management of the forest is given a fresh look beginning with the first principles. Otherwise neither the forest will be saved, nor will there be a solution of the problems of the tribal people !

*Immediate Action*

43. If the present confrontation between the tribal people and the administration has to end, complete clarity about the issue of land must be reached immediately. The most important thing in this regard is that certain basic premises, which are accepted without any thought, such as, the boundaries of the reserved forests are unalterable and any tribal who is found inside the forest is a trespasser, must be abandoned. The habitations and agricultural lands in many cases predate the reservation of concerned forests; the process of reservation has been faulty in many cases. Therefore people in such cases cannot be treated as trespassers and encroachers. Moreover, whosoever is living in whatsoever manner in the forest cannot be just driven away just like that, unless the government provides him an alternative which is within his capability of use. Until such an alternative is given, the tribal will continue to do what he considers as right according to his understanding. This is his basic Constitutional right.

44. There is only one way to resolve this tangle. The present law and order approach must be abandoned for good and a clear plan of action should be formulated on the basis of mutual understanding and goodwill between the government and the people within the frame of a clear long term perspective. A beginning in this regard can be made with a sort of informal agreement between the people and the government accepting the today's position as it is about the land with the people. In this case, the government on its part should make a commitment that no action will be taken against the people in respect of the land under cultivation unless and until a final action plan has been prepared on the basis of mutual understanding. The village community on its part should take the responsibility of ensuring that there will be no further extension of cultivation in the forest. With a view to create a climate of goodwill, all cases pending in the courts against the tribal people should be withdrawn. Moreover a final decision should be taken in respect of the land of each individual taking into account his specific situation. If this approach is adopted, the present confrontation between the people and the State about the land will end. A plan should be prepared for making this temporary state of peace a permanent one. Such a plan should, *inter alia*, provide for work to the people in the immediate context, protection and improvement of environment and creation of a strong and permanent economic base for the tribal people.

*Waste Lands and Degraded Forests*

45. It is necessary to give special attention to the management of waste lands and degraded forests within the overall frame of equitable rights over resources. So far these resources were either unproductive or were located in remote regions. Therefore nobody had any objection if the poor was depending on and making a living from these resources. But now that there is a good possibility of huge profits being made from them, all eyes are fixed on them. But most of these resources are still the basis for making a living for many amongst the poor. This fact is hardly realised simply because unfortunately the people do not have formal rights over them. Therefore the government can do whatever it likes with these resources. The rich people are trying to acquire rights over them, taking advantage of this invidious situation in the name of development and under the cover of law. Any alternative use of resources ignoring the right of life of the people is against the spirit of our Constitution and therefore unconstitutional.

46. The plea to include industrial establishments and rich people in programmes of waste lands and degraded forest land is not only anti-people but is also detrimental to the national

objective of environmental protection. The perception of the industrialists and rich people about the use of resources is purely commercial guided by profit and loss accounts. The cost of their programmes become very heavy because the design in their case intrinsically involves opposition to forces of nature and confrontation with the common man. Moreover these programmes are knowingly made so expensive so that the poor may not get included in them. In a way, this is a part of the big conspiracy of the rich people which aims at grabbing all these resources at the national level. Moreover the scope of such costly programme is bound to be limited and limited to only better lands. In contrast, the programmes of the poor, based on full use of their personal labour and nature's force, can be taken up on a very large scale without much dependence on financial investment. This will serve the interests of both the poor and the environment best.

47. Thus an opportunity has arisen in the economic history of our country when the resources from which the poor people have been making a living, howsoever meagre and without formal recognition of their rights, can be put to a new use which can enable them to lead a good life. If their right for making a living from these resources is acknowledged, they can have something which they can call their own. If this is to be achieved, industrialists and rich people must be strictly kept out from any programme of waste lands and depleted forest. All contracts and large leases such as the ones in Orissa and Karnataka, should be annuled. Social equity must be given the highest place in the new agreements. Only those persons should be included in the new programme who are prepared to work with their own hands. It is only such a policy, that will help in improving the environment and will strengthen the foundations of national economic development.

48. The marginal resources comprising the waste lands and depleted forests are the last hope of the poor and also the only opportunity for them. If the open loot of these resources by a hand full of persons, on the strength of their control over technology and money resources is not prevented, this last flicker of hope of the poor will get extinguished and perhaps their last opportunity for living with dignity and self-respect will also slip through, may be for ever. There is only one ray of hope in this grave crisis—perhaps the poor people will not accept this injustice !

### *Water*

49. The right to life of the people in relation to the use of water as a resource has also been compromised in recent times on account of the process of centralisation in its management and entry of capital in its use. The water therefore, is becoming out of reach of the common man who so far was able to use it, employing his own labour and skills and common place technology. The stronger sections of the society are now using water indiscriminately for personal profit with the help of capital and technology at their command. Similarly on another front the State and other formal institutions have acquired control over water in rivers and tanks ignoring the right of people making a living from it. There is great dissatisfaction amongst the fishermen and *kevals* living on river banks. A number of movements have also been launched by them at a number of places.

50. Similarly the interests of formal institutions, and alongwith them those of contractors, in the rivers and tanks in tribal areas have become quite prominent. In this process the traditional rights of the local community have been completely ignored. The people are not prepared to compromise with this situation. A new structure should be evolved with regard to

water resources as well, on the same lines discussed for other resources. The right to life of the people must be kept at the centre. The present trend of centralisation with regard to the rights over water resources must be checked in the interest of social equity. Otherwise, the right to life of the people will continue to be ignored and the Constitution will continued to be violated.

### *Displacement*

51. The other side of the issue of the rights over resources, in the context of their alternative use for development, is displacement. A comprehensive review of the situation about displacement clearly brings out that we have reached a critical stage in the journey of development, particularly in the tribal areas, which can no longer be ignored. The greatest loss in the wake of development has been caused to the tribals and the resourceless people, bulk of whom belong to the Scheduled Castes. Their rights over resources either have remained completely unnoticed or have been only partially recognised because all resources have been treated merely as property. The biggest irony is that a 19th century colonial law like the Land Acquisition Act is being used indiscriminately in the great voyage of development. This law does not admit the concept of the right to life and the will of the Raj has been accorded the hoary status of 'public purpose'.

52. The Land Acquisition Act, in a way, is functioning like an indomitable inanimate instrument for the transformation of the agriculture based traditional system into a modern system. This instrument, in that process, is snatching away from the poor all those natural resources which have formed the basis of their life so far, with the characteristic unconcern and mechanicality of an instrument, for presenting the same to be used as raw-material by the new system. The sharecropper, agricultural labourer, shepherd, hunter, *kevat* and such like do not even exist in the eyes of this law which is concerned only with the so-called owners of those resources. Moreover, the owner of land himself gets compensation only for his ownership right, following the principle of market price or capitalisation of net income. It is not even realised that land to a farmer is the source of making a living with skilful use of his personal labour. The stark reality about the wanderings of a proud farmer, whose honour is inexorably linked with his land, for vending his labour and his deep agony are not even alluded to. Meaningless are to the new world the questions of his honour, his sentiments and even his future !

53. Whatever may be the law on this point but, in my view, the means of livelihood of a citizen and his right to life cannot be taken away. Mere exchange of property is the concern of Land Acquisition Act, the concept of right to life simply does not exist so far as this Law goes. The law governing the acquisition of land, therefore, is not in accordance with the spirit of our Constitution; this law is unconstitutional. That is not all. The process, which is being adopted for the acquisition of land in the field, is unethical and anti-people. Acquisition of land becomes a certainty, once a decision is taken about establishment of a project. Invitation of objections in accordance with the law thereafter is a mockery of the whole system. Thus, even though the letter of law may be followed but its intention is not being honoured. Therefore, the entire process is illegal.

54. The situation in the tribal areas in relation to the displacement is especially a matter of grave concern. The rich natural resources located in these areas are today required for development. But the traditional rights of the people who are fully dependent on those resources for their living, are not recognised simply because they are not formally recorded

The biggest irony is that the existence of the community and its relationship with the habitat are not even alluded to in any law whatsoever. Moreover all those aspects of life, which cannot be captured within the frame comprising formal rights concerning property and market relations, are conspicuous by their absence. The emotional world of the tribal people is as real as the modern world of concrete jungle, it is much more sublime. Therefore, the protection of this sublime 'world' has also been recognised in the global context as a human right. The present process of land acquisition is not only violative of the Constitutional rights but even that basic human right. The biggest irony is that the state does not hesitate in disowning even the Constitutional responsibility of providing protection to the simple tribal communities, simply because it has taken on its shoulders another grave responsibility of the so-called development.

55. An important question, which arises at this stage, is whether the tribal people should have an opportunity of participation in the fruits of development. It would have been a matter of great happiness for me if effective measures had been taken for this purpose. Today even rehabilitation depends on the mercy of the state. The entitlement of a displaced person is limited only to compensation and that too in respect of that property alone which may be in his name. But even so, what will he do with that money? Some islands of affluence do appear in the tribal areas with development, but they are surrounded by an ocean of misery, social disorganisation and personal destitution. When the tribal, after the loot of his resource-base runs towards the forests for refuge, he is not allowed to set his feet there; they are out of bounds for him. He is obliged to join in the end the army of landless labourer in the countryside elsewhere or to seek the 'security' of city slums and their side-walks. This is the plain reality of the so-called development in the tribal areas nothing short of a great human tragedy!

56. The fact is that the paradigm of development adopted in our country and its compeer life style are themselves incogruous with our socio-economic situation. So long as they are accepted as ideals, establishment of a 'Fourth World' and biological exploitation of the people comprising 'Hindustanwa' are inevitable. Therefore, the very foundation of the new structure is wrong. The minaret of development, which is being raised on the ruins of the economy of the ordinary people with utter disregard of their fundamental rights, cannot be a lasting structure. The people, who are victims of injustice, are now rejecting this paradigm. Whatever may be the formal position about land acquisition, to the ordinary tribal it is nothing but forcible occupation of his land. There is nothing new in this. This has been his experience through the ages, it is his experience even now. There is, however, a difference. Earlier other people were aggressors, today the assault is by government itself. Then where is he to go? And it is here that he revolts—from the core of his heart—against the entire system.

57. A pre-condition for any new use of natural resources should be that the concerned institution or the government should not only provide an alternative economic base for the people, who may have been depending on them for their living, but should ensure that the new life is better than the earlier. Moreover the government must proceed with honesty, it must be fully convinced that whatever is being promised is real and feasible. What is still more important is that the affected people should themselves be able to realise that the alternative will be better for them and they are prepared for it of their free will. If these principles are ignored, any action in that situation which may cause displacement will be against the democratic values and also against the spirit of our Constitution. And any use of force in the name of law and order against the people, who are fighting for establishing their right to life,

who are struggling against the paradigm of development which is not only inequitous, but is violative of the law of the land, is against the spirit of our Constitution and against human rights. In fact, it is a mortal affront to the cultural sensitivity of our country. And bulk of the affected people comprise the simple tribal people, members of the Scheduled Castes and other resourceless people, who have been suffering for ages and whose protection has been entrusted to the State by our Constitution !

### *The Struggle in Narmada Valley*

58. The Narmada Valley Project has a special significance in relation to displacement, rehabilitation and the paradigm of development. This project comprising a series of projects perhaps is the biggest in the whole world. It also has the dubious distinction of being a project which will be responsible for the largest displacement in the whole world. About 70% of the project-affected persons in Sardar Sarovar are members of the scheduled tribes. In this case rehabilitation has been accepted in principle as an integral part of the project. However, the irony is that the struggle of the people is most intense in this valley.

59. The struggle of the project affected people in Sardar Sarovar started with the issue of rehabilitation. The concerned state governments in response to this movement have made many improvements in their policies of rehabilitation and also implementation. I have also been participating in this dialogue personally for the last three years. But the distance between the project-affected people and the government has been gradually increasing. The people now have stopped talking about rehabilitation and have taken a decision not to leave their homes and are offering total opposition to the project itself.

60. It is a pity that the interaction with the project-affected people has been rather devoid of human sensitivity. Attempts have always been made to deal with all sorts of issues only at a formal level. However, thanks to the award of the Narmada Water Disputes Tribunal and agreement of the World Bank, the people in this case were not dependent on the mercy of the State as in other projects, but had something to stand on as a matter of right. But in the absence of necessary grace from the side of the State, the resolution of every single point involved a protracted process beginning with unseemly dispute, struggle, long anxious wait by the people for the outcome and in the end minimal concessions just for passing over the crisis and fulfilling the formality. This process has continued for years. One inevitable consequence of this approach has been that the reliability of government data and their promises came to be seriously questioned. And the people on their part in this process became more and more conscious about their own situation, their rights and the broader context. The people also gradually came to realise the bitter truth that, as the matter stands today, their rehabilitation was not possible.

61. In view of the grave situation and also the larger issues involved in this case, I specially drew attention of the Central and the State governments to certain matters concerning policy, planning and implementation of displacement and rehabilitation in general and about the situation of the tribal people in particular. But it is regretted that there was no preparedness at any level to move away from the beaten track and cross the limits of their respective narrow frames. Consequently even a common policy has not been worked out so far. There is uncertainty on a number of elementary issues such as the definition of displaced persons, their entitlements, the difference between the field situation and government records, dissonance because of changing criteria, neglect of the problems of transition, estimates about the land necessary for rehabilitation,

financial outlays, etc. It is clear, notwithstanding the promise about 'land for land', that land is not available for rehabilitation and rehabilitation of people as a communities is not possible. The packages of rehabilitation facilities in the three states are very different. So as long as these differences persist, the right of the people to settle in any state according to their free choice will continue to be violated. Thus there is no possibility of even ordinary rehabilitation, let alone the ideal rehabilitation based on a comprehensive plan prepared with the consent and in association with the people. Moreover now there is a proposal that the affected people may purchase private land and do their own rehabilitation. This will make for a basic change in the concept of rehabilitation itself which in the final analysis will leave the poor amongst the displaced high and dry who comprise the vast majority amongst them. This concept is not acceptable even to other state governments, let alone its acceptance by the affected people. Moreover, there are many questions about displacement and rehabilitation, such as the rehabilitation of those displaced in the earlier phase of Sardar Sarovar, rehabilitation of people likely to be affected by certain associated activities of the project and the people who will face the catastrophe of 'second displacement' because of private purchase of land, which cannot be ignored for long. In view of these facts, in my view, the rehabilitation of the displaced persons of Narmada Valley in the present situation is not possible notwithstanding the declared policies of the state and all sorts of promises made so far.

62. An entirely new and unexpected situation has arisen in the history of our national development because of the people's struggle in the Narmada Valley on the issue of displacement. So far the people's movements against displacement were sporadic and, more or less, isolated. Moreover, displacement itself was accepted as inevitable and the affected people would just beg for some relief. In the Narmada struggle people from all parts of the country facing the backlash of development have come together and are raising perhaps for the first time the question of basic Constitutional rights. And this issue has not been raised only at the conceptual level for the sake of an argument or debate; instead it is backed by people's own understanding and their resolve. That is not all. As the real nature of issues has become clearer, questions are being raised against the concept of development itself.

63. In fact we have reached a stage in our national life where a fresh debate from the very first principles, is a must on the basic questions of the concept of development and the partnership of people therein. The inequitous traditions, dissonant development and undesirable centralisation together are rendering the majority of the people in our country resourceless, they are losing whatever little they are left with. The mega projects are obviously destructive from the human and environmental angles, but they are ominous even on purely economic considerations. The discussion in all contexts through out my report finally leads to the same point, and that is, disregard of the right to life of the ordinary people. It is also a matter of discussion almost everywhere, it is also the most basic question. This question has now become crucial for the tribal people. The very existence of the tribal communities is at stake. About 15% of the tribal people have already been displaced in one form or the other. They have lost everything they had in this process. But even now there is no realisation that they have lost something for the sake of national development, not to speak of any assessment of their loss in this process. If this process continues as it is, that day is not far when the tribal people will have no place to stand on in their own homes. In many areas it has already happened, this is happening in many other areas.

64. Unfortunately everyone except the tribal people who are facing the backlash of development themselves and a few other sensitive people, have adopted the posture of 'convenient silence'

on the issue of displacement. Of, they have accepted displacement as their fate, under the cover of some convenient quotes such as "someone will have to bear the cost of development", or "government is duty bound to support the legal processes," which are accorded the aura of universal truths. But the Constitutional schema, democratic values and human rights are not even openly referred to; what will be the position in their regard is not a subject of discussion, nor an issue of serious thought.

65. A number of issues have come to the fore clearly for the first time in the movement of Narmada Valley. But the most serious turn has come only recently. The claims of state-interest on the basis of comparative strength of numbers and public-interest under the cover of all-party consensus are being presented by the beneficiary groups as irrefutable arguments in their favour. When such arguments are put forward for a single project, they appear to be very simple and obvious. But when we add up all projects we find that it is the tribal who is the sufferer everywhere and the benefits of development are accruing to other people. Therefore, the question is whether these arguments can be accepted when the issues relate to certain basic principles, human values and constitutional rights. In my previous report I had referred to the case of violation of Constitution in Andhra Pradesh with regard to the protection of tribal lands. The State Government had tried to legitimise the open violation of the rights of the tribal people in this case, with a halo of all party consensus. Even now the position regarding violation of constitutional rights in Andhra Pradesh has not been cleared.

66. These arguments are not special for any one project. But they have come into full relief in the struggle of Narmada Valley. In my opinion, it is clear that like many other development projects in the case of Sardar Sarovar as well, there is violation of the law, of the Constitution and of human rights and the State is ignoring its Constitutional responsibility of protecting the tribal communities. There will be no change in the basic situation which has arisen because of the proposed rehabilitation for the project affected people of Sardar Sarovar so long as the affected people do not accept the alternative of their free will. Similarly, the facts that there has been grave injustice so far and there is grave injustice even now elsewhere, cannot be accepted as an argument to justify a comparatively less severe forms of injustice. Injustice is injustice, and wherever people are fighting against injustice their struggle are justified. It is true that perhaps these questions about law, Constitution and human rights have not been raised in this form earlier in other projects before Sardar Sarovar. But in a state of structural transformation of the system basic questions are bound to arise in every aspect sometime or the other for the first time. After all the same argument is put forward by the *thakur* for his 'bonded' ploughman. Once the ordinary people become aware about injustice, the situation does not remain the same. A similar situation has been reached with regard to matters concerning displacement and the related concept of development. The struggle of Narmada is now a symbol of qualitative change in the perception about displacement.

67. In any case, a situation has arisen in the Narmada Valley Project where there is a direct clash between the obligation of the state to act in accordance with the law on the one hand and the affirmation of the Constitutional and human values on the other. Displacement and the struggle of people in Narmada Valley as its symbol have become the touch-stone for our national commitment to human values. Can the people be evicted from their homes without their consent? Is the social identity of a people negotiable? Can the tribal community be forced to stand on a precipice in full know of the fact that disorganisation as a community and destitution for its members are the destiny? Can justice be determined on the basis of

arithmetic of numbers? Can there be a barter between the survival-needs of some and more facilities and greater comforts for many? It, however, appears that in a hurry for development, no one has time to pause and think about these questions.

68. There is only one possible way out from this extremely regrettable situation, that is, all further activity with regard to Sardar Sarovar must be based on the consent of the people obtained after earning their confidence. And this will not be possible so long as a big dam, which has become a symbol of injustice and a curse for the people, continues to rise in front of them. The helpless utterances of 'ayes' and 'yes' under the deep shadow of such a project with regard to suggestions for preparing a plan of rehabilitation cannot be taken as their consent for moving out from their homes. Moreover an extremely unfortunate situation has arisen in many areas. Force is being openly used in many cases against the project-affected people. The ridicule of the people's resolution for preferring a 'watery grave' and the indirect terror through projection of the inevitability of submergence and its consequences as the dam gets filled finally, are being used for getting their helpless consent. This is characteristic of the unconcern of an inanimate instrument and power-intoxication of the rulers. This is not in keeping with the sensitivity of our nation. I am fully confident that our national sensitivity has not descended to those abysmal levels where the last brick on the structure of a dam can be laid in full knowledge of the fact that even a single person, who is fighting the lone battle for the establishment of his right to life, will not move out of his place and get drowned. In any case, the use of direct or indirect force against a simple people who are struggling for their right to life and whose protection has been entrusted by the Constitution to the State, is a mockery of the whole Constitutional ground plan. No argument from the side of the state can be accepted in that regard.

69. I hope that the state governments so far have taken various measures in the ordinary course without realisation of these vital aspects about unconstitutionality of their action and violation of human rights. Therefore, now that the issues are clearer, they will enter into dialogue with the people expressing regret for the lapses so far with due regard for their dignity. After all, if everyone concerned is so confident about all aspects of the entire project including rehabilitation that they can make an irrepressible resolve to go ahead even in the face of total opposition of the affected people, they can very well answer the questions raised by the people in this regard. I would urge that a new chapter should be started about the use of natural resources with full recognition of the new consciousness about the right to life engendered amongst the people in the course of Narmada movement. Let the people in the benefited zone also join this dialogue. The set formula about gains and losses of various projects including Sardar Sarovar Project so far has been—unqualified destitution for one group, benefits and yet more benefits for another group, and full responsibility in all other matters including finances to be assumed by the government. Will the people in the benefited zone come forward to guarantee a respectable position for the affected people in the new economy by making them equal partners in the real sense? Will those people, who consider Sardar Sarovar project as their lifeline, assure those people, whose very line of life is bound to be snapped by it, that their right to life will be honoured and that they will be assured of retaining their social identity?

70. If this is done it will really signify the beginning of a new chapter in the history of development. But it has to be noted that now mere promulgation of policies, programmes and assurances will not do. Moreover, in the present situation it will be necessary to assure that the execution of Sardar Sarovar project will be allowed to continue only after a satisfactory solution has been found with the consent of the people after considering all aspects of the

problem. Until that time the entire work on this project shall remain suspended. So long as the execution of this project continues as it is, law, Constitution and human rights will continue to be violated and the State will continue to be guilty of ignoring its responsibility for protecting the tribal people. Consequently the State itself will be responsible for the unhappy results of the growing confrontation.

#### *National Policy and Immediate Action*

71. The formulation of a policy for development and displacement at the national level has already been greatly delayed. Immediate action has to be taken for preparing a policy in this regard. But such a decision for the formulation of a policy must not be allowed to be used as a ploy for postponing the action for solving the problems of the affected people even by a day. The first decision about developmental projects cannot but be to make a declaration at the national level, cutting through all formalities, that appropriate arrangements shall be made for all those people at least in the tribal areas who have already been adversely affected by various projects. Similarly all projects under execution should be immediately reviewed and suitable plans should be prepared for the partnership of people with their consent. And so long as this is not possible, the work on the concerned project must be stopped. In future no project which may envisage alternative use of resources including land, which may be the source of living for a people, should not be cleared under any circumstances without prior consent of the people. It is only then that the spirit of the Constitution can be said to be honoured.

#### *Self-Governing System*

72. The only reason for the wrong direction and profusion of anomalies in our national life is that not only the establishment of a truly self-governing system in the villages has been neglected even after independence, but on the contrary centralisation has been growing in all matters concerning people's life. The formal representative institutions, which the people got in the name of self-governing system, could not become their own and in the present situation, they cannot become their own. Moreover the same structure has been super-imposed as it is on the tribal areas which has had serious consequences for the tribal people.

73. Self-governance is still a living tradition in the tribal society. The tribal people had been struggling since the British days against the 'criminalisation' of the whole community due to the super-imposition of incongruous laws and complex administrative system and disregard of their rights over the local resources. But the extension of formal representative institutions to the tribal areas after independence has had the effect of introducing two separate structures even at the social level. In this way, a peculiar incongruous situation has arisen in the tribal areas. On the one hand, because of this artificial division there is no possibility of new ideas reaching the traditional institutions. Consequently stranglehold of ritual on these traditional institutions has become stronger. In many areas brutal murders on the charge of sorcery, usually with the hidden motive of economic gain or personal vendetta, have become quite common about which even the sensitive social workers feel helpless. On the other hand, the formal institutions are acquiring their distinctive identity. Consequently disregard of community interests has become quite common. These institutions, because of the politics of vote, have become an important cause of social discord. On the other side, they do not have much to do with the real problems of the people's life. Therefore there is no opportunity for a healthy dialogue between the formal institutions and the community. This duality has been forced on the people against their will, largely because of lack of understanding about the tribal situation. Such an organisational structure in the tribal areas is an open violation of the Constitutional schema.

74. It is on the account of this anomaly that the tribal people are rather confused. They are searching the significance of freedom and democracy in the immediate context of their own life. Forest, land, government officials—nothing has changed; on the contrary the situation has further deteriorated. They have nothing but disillusionment in the bargain. They are unable to understand the meaning of freedom. On the other hand, when they talk about simple things like managing their own affairs and try to pursue the idea, there is confrontation; they may have to face the charge of being anti-national. A number of tribal-majority states have been established in the North-East yet the situation is not much different in basic essentials. There is an unstated confrontation between the formal authority of the State and the traditional authority of village community, which is becoming increasingly sharper.

75. All these anomalies and confrontations in tribal areas are not in keeping with the spirit of our Constitution. They must be ended forthwith. A two-tier structures of institutions—one at the level of the small face-to-face community (hamlet) and the other at the level of a small group of villages (pargana), in consonance with the tradition in tribal areas, should be established. These institutions should be given the opportunity of managing all aspects of their life—new and old—so that they can adapt their old traditions with reference to the new situation, they can establish new conventions with good understanding of the emerging needs, and what is most important, they can learn from their mistakes. They should be enabled to retain their identity as a living community, so that they can become equal partners in the national life with dignity and self-respect, retaining the best from their tradition and assimilating the significant achievements of the modern society. This is the essence of Constitutional schema for the tribal people. This is not only a national obligation, but also a great responsibility towards the entire humanity—this is the last hope for recreation of a society based on human values.

#### *Basic Anomalies, People's Struggle and Reaction*

76. Lastly, one thing which has come in bold relief in this report is the struggle on the basic issues concerning the right to life throughout the country. The form of the struggle in each case is quite different, but basically they are expressions of people's determination for the establishment of social order based on equity and justice. Therefore they are in consonance with the spirit of our Constitution. But all these struggles, notwithstanding this basic consonance with the national objective and the Constitutional schema, at some turn or the other, get transformed into a confrontation with the system. A basic reason for this is that our legal system is not in consonance with the spirit of our democratic Constitution. Therefore even though most of the actions of the state are in accordance with the law, yet in many cases there is open violation of Constitutional and human rights. The system is not even prepared to take the trouble of acknowledging the existence of that open violation.

77. The reaction of the people in this milieu is taking a new form. The people in many areas are rejecting the incongruous system exercising their rights as a citizen of free India. The tribal people in Sonbhadra are not prepared to go out of their village for establishing their rights over the land. They have taken a resolve—'our management in our village'—rejecting the present system of land settlement by the state. The landless people in Sole and Pulmamidi are not prepared to surrender their right to till the land which they have been tilling so far. The people in Karnataka are not prepared to give over their village lands to the industrialists. The labourers in the quarries of Shankargarh are not prepared to wait for the decision of the Court in a matter which concerns their livelihood. The tribal people in Santhal Pargana are protecting the community right over village tanks even at the risk of their life. The *Kevats* of Ganga

are rejecting the right of zamindars on the water and are fighting to establish their traditional rights over the same. The people in Kolhan are sticking to their traditional system of self-management and are not prepared to surrender that right in favour of new formal institutions established by the state. The people living in sanctuaries and national parks are not prepared to move out leaving their homes behind. The *Rai Sabhas* of Adilabad are managing all affairs of the village community on their own. The people in Bastar and Garhchiroli are claiming primacy of community in the management of social matters, forests and other resources. They have taken the resolve of 'Our Government in Our Village' (*Mawa Mate Mawa Sarkar*). The project affected people in Narmada Valley and other projects are rejecting the entire developmental process which is responsible for their displacement disorganisation and destitution because it is against the law of the land and is also unconstitutional; they have solemnly resolved to establish their right to life. And finally, the people in many areas are resolving to reject all those laws which are not in keeping with the spirit of our Constitution with the Land Acquisition Act at the top of that list.

78. It is possible that in some cases people in their resolutions may be directly opposing the law, but it is with a difference. If they are at all breaking a law, they are breaking the law not just for the sake of breaking the law, nor are they breaking it as a first step towards the demolition of the system itself as is the avowed objective of some extremist groups. These people still swear by the Constitution. But their contention is that the system has not been suitably adapted in keeping with the spirit of the Constitution even after long 40 years of its enforcement. Therefore they are obliged to disregard the incongruous laws on their own, with the basic objective of protecting their fundamental rights, honouring the spirit of the Constitution and establishing human values. The resolutions of the people in this regard broadly concern three aspects, viz., (i) right of continued use of resources by those who depend on them for their living, (ii) right of a unbreakable link between the mean of production and the worker and (iii) rejection of those laws which are against the Constitution and against the human rights.

79. Here we face a rather confusing and complex situation. All actions by the people described above are deemed to be violations of law and are being dealt with as such by the state authorities. If this approach continues, the solemn resolutions by the people will continue to be perceived as a form of revolt against its authority by the state. In that process the people will become still more disoriented and confrontation will get further accentuated. There is no doubt that in the end the system will have to bow before the people's will, but only after a great human tragedy. Can there be a more ridiculous situation than the one when a tribal is asked about the extremist activity in his area, his natural response with a sense of gratitude towards the extremists is that "if nothing else, at least atrocities of the administration have ended after the coming of the '*dadas*'?" What should one say about a system in which the Constitution itself has bestowed on the President and the Governors unlimited powers for protection and welfare of the tribal people, yet they have not been able to save the people from exploitation and oppression of their own servants, and this historic task has been accomplished only by the Naxalites in some areas? What is the intrinsic nature of that system in which the law itself has become the biggest terror for the common man? Under the cover of that law, he is being deprived of everything—right to life, his honour and even his freedom. And the law is being used for exploitation, oppression and finally even to wipe out their social identity itself. Exploitation, terror and tyranny are experienced reality of the common man, particularly the members of the Scheduled Castes and Scheduled Tribes!

80. This is the tragedy of our national life. Those who are operating the system are helpless before that system, they are prisoners of its logic. They are also perhaps to some extent assured about its promises to the poor. But the common man now has no faith, whatever faith is lingering is also disappearing. There is only one way to come out of this tragic situation, that is, to acknowledge, as the first step, the basic anomaly of our national life viz., the ritual of a legal process can strangle justice—and give high regard to the wisdom of the people and follow them. The resolutions of the people referred to in this report, should not be seen in the narrow legal frame but must be viewed in the broader perspective of human rights and democratic values. Moreover it was Tilak and Gandhi who pronounced that “Swaraj is my birth right” and ‘Toleration of injustice is a sin’. If the Government is helpless in removing the basic anomalies and ending the unjust situation, it can at least do one thing, that is, not to brand those, who are struggling for justice as offenders. Self-governance is the soul of democracy. Supporting those, who are struggling for that principle, is the duty of all citizens. I hope that the Government will support the people’s resolution for protecting their right to life in general and for establishing self-governing system in keeping with their tradition in the tribal areas. I further hope that the government will also adapt the formal system in accordance with the wishes of the people, even though with so much of delay, which alone will make the Constitutional schema a living reality.

#### *Five Tasks...*

81. An important objective of this Report is to establish, through you, a dialogue with the common man who, in the ultimate analysis, is the source of all reasons, all processes and finally all objectives. I have not made any formal recommendations. What recommendations can be made when the foundation of the system itself is faulty? The law and the system itself are against the spirit of the Constitution and basic tenets of natural justice; moreover the right to life of ordinary people is being violated at every step. The whole report itself is one substantial recommendation.

82. So long as a process of basic change in accordance with the spirit of the Constitution does not begin, isolated measures will serve merely as patch work. It will be like dressing a wound while the root cause of the disease remains as it is. Nevertheless, some elements are vital. If consensus can be engendered about them, if every person located at different levels in the national life can contribute according to his situation, it will be possible to fulfil, even though partially, the national goal and social obligation concerning equity and justice.

Firstly, our legal frame should be restructured with the right to life of the common man as the central point so that the gross dissonance between the law and the Constitution can end. As a first step, all unconstitutional elements should be identified and removed from all the laws particularly those, concerning the command over resources, ownership of means of production and entitlement for labour. A new legal frame should be evolved which is truly equitable.

Secondly, in whatever way the common man may be making his living, that should be recognised as a right and the state should provide protection to his right to life in that form removing all discordant elements. This should in particular cover bonded labourers working in different establishments, share croppers and agricultural labourers, forest dwellers and people depending on the marginal resources of villages.

Thirdly, a system of self-governance should be established at least in the tribal area in which the local community should have the full responsibility for managing their day-to-day life including the maintenance and use of all the resources.

Fourthly, so long as the State is unable to discharge the Constitutional obligations, the people's resolve for recreation of their system based on those basic values should be honoured and their peaceful struggles should be supported. Any use of force, direct or indirect, against the people's struggles for establishing their right to life should be prohibited.

Fifthly, certain basic questions have arisen concerning the right to life, paradigm of development and the style of life within the broad frame of the existing law, Constitution, human rights and the responsibility of the State particularly in the tribal areas. The movement in Narmada Valley has become a symbol covering all these questions. It will be necessary to find a satisfactory solution to these problems rising above the clamour amongst different interest-groups in the immediate context to a higher level and broader frame of our civilisational obligation and human values. The paradigm of development and style of life must be redefined so that they are in harmony with the conditions of our country and our national objectives.

#### *... And also a Resolution*

83. And there is a need for national resolution as well for creating a climate of goodwill, particularly in the tribal areas. A unilateral process of development should not be imposed on the voiceless people. Their life should not be put to stake in the name of national development and high ideals. Today the tribal people have nothing but the backlash of development in the name of development which has led to disorganisation as a community and destitution as individuals. Everywhere the tribal is pleading with folded hands—'do not burn my hut', .. 'save me, where I will go ? .. 'Our *maiya* (Mother) will be left behind', .. 'or else bomb and finish us ?' .. But there is no one to listen to him. The moving words of his pathetic pleas will keep wandering filling those hills and forests; they will continue to reverberate perhaps eternally, laden with the chilling message of the helplessness of man in the face of an inhuman system. . . .

84. If a climate of goodwill is to be created, the war waged against the tribal people in the name of development must be stopped forthwith. Instead he should be extended an invitation for participation in the great voyage for achieving real development. This is a difficult task. This will be possible only when we decide that a 'Fourth World' shall not be allowed to come into being as a concomitant of development in our country. It will be necessary to give a fresh look to the paradigm of development and the style of life. A climate of confidence and goodwill can be created in the tribal area only if attention is paid immediately to those people who have already become victims of development and the new system, who are in great agony. Instead of being concerned about moving ahead in a great hurry, the tribal people should be given, as the first step, the responsibility of managing their own social-economic life on the one hand and should be made partners in the larger national development on the other. It is possible that the pace of change and development may have to be slowed down to some extent. It is also possible that we may have to stop for a while in some places. But this is necessary and also desirable. If this caution is not exercised, the wheel of development itself may crumble in the face of bubbling discontent and erupting revolts in the tribal areas.

#### *Rights and Responsibilities*

85. I cannot say what will be reaction of the system to this Report of mine. But when the question is of the very identity of one-fourth of the people in the country, when the issue is about their basic right to life, when the people themselves are struggling for the establishment of that right, not to present a clear picture about the situation would have been the biggest crime, it would have been dereliction of my duty. I had suggested in my earlier Report that the

National Development Council should especially consider this whole situation about the scheduled castes and the scheduled tribes separately. I had also requested the judiciary that they may review the situation in the context of the way the system has been functioning that whether the denigration of the rights of the people can be justified simply because the State did not discharge its responsibility entrusted to it by the Constitution and the tribal is facing its consequences. I will like to renew this request of mine once more.

86. But I will also like to urge on all those people, who are a part of the modern system, that after all they also have a duty in their individual capacities. They may do whatever may be possible for fulfilling that obligation in relation to the people's struggles for fundamental rights and basic principles. If they cannot participate directly in their struggles for the right to life, the minimum which they can do is not to oppose them. Similarly I will again urge on the political parties that the issues concerning basic principles should be kept separate from the politics of vote. The members of the organised sector and those having command over resources comprising the so-called '*Bharat*', may also look at the logic of the present system from the perspective of the bulk of the people who are resourceless comprising '*Hindustanva*'. I hope that the man of learning will ponder over the simple analysis which has been presented here and guide the people to cut through the illusive obsession of development and inspire them to search for a new path so that we can establish a socialist society in its true sense. And there is only one power—the youth power—which can bring about the vital qualitative change in the entire system it not merely a wish, but I am fully confident that our young people, impelled by the spirit of dedication, sacrifice and driven by the dream of creating a new society will come forward to accept this great challenge in this unique phase not only in the history of our nation but in the history of the human civilization itself.

87. Finally I, as the Commissioner for Scheduled Castes and Scheduled Tribes, myself have a responsibility that the people, for whom the Constitutional safeguards have been provided and the review of whose functioning has been entrusted to me, are made aware about the exact position in this regard. But the common man does not understand the abstract language of principles and policies; he is fully engrossed in the problems of the day. Unless the substance of all principles and policies is presented to him in the context of his day-to-day problems, they will have no meaning, they are of no significance. What I have said in this report will perhaps echo for a while in some assembly halls and then disappear in the void around. Only a dialogue concerning the struggle for life of the people themselves can be its real and lasting expression.

88. Today when the ploughman who makes a living by tilling the land has no right over it, when the tribal is a stranger in his own home, when the workers and the tribals in many areas are fighting their battles all alone, when the state has no hesitation in using force against people struggling for establishing their right to life oblivious of the fact that it has not only been entrusted the full responsibility of their protection but whose very existence as a people depends on its good will, a highly anomalous situation has been created. Today these people may get some real relief, even though quite meagre, only from the extremists and thereafter they are unwittingly caught in the holocaust of a crossfire. In this situation, if a dialogue has to be established with them for discharging, eventhough symbolic, the obligation as a part of the system and also in relation to the constitutional responsibility there is no other alternative but to get directly linked with their life struggle. It is within this frame of affection and obligation that it is now obligatory for me to get associated with the struggles of the common man, particularly the members of the Scheduled Castes and Scheduled Tribes, for the establishment of their right

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to life. I am presenting this report to you with this solemn resolve. It is also with a fond hope that there will be a serious discussion at the national level on the fundamental questions concerning human rights democratic values and constitutional scheme raised in this report which may contribute in making a decisive turn in the national life and building up of our nation in the image of the dreams of the founding fathers of our Constitution.

With regards,

Yours faithfully,

B. D. Sharma

( B. D. SHARMA )

COMMISSIONER FOR  
SCHEDULED CASTES & SCHEDULED TRIBES

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## BACKGROUND

Some basic Constitutional issues were discussed at length in the Twenty-eighth Report. The main conclusion was that our Constitution envisages the establishment of a society which should be imbued with the spirit of equality, justice and fraternity. All necessary ingredients for this purpose have been provided for, directly or indirectly, in our Constitution.

1.2 The way to achieve this goal has been clearly set out in the Constitution itself. First of all, the Constitution envisages termination of all inhuman practices and relationships such as untouchability and forced labour. The next step in this regard was to be termination of all inequitous relationships of the traditional economic system. Accordingly, the princely states were abolished, jagirs and zamindaris were abolished and the principle of land to the tiller was to be operationalised through removal of all sorts of intermediaries. The next natural question after this was the creation of a new economic system free from the ravages of poverty in which the common man could lead a happy life. There were two facets of this question. Firstly, the British had destroyed our industrial base for the well-being and progress of their home economy. Therefore, the foremost task after Independence was to protect the household and village industries to provide relief to people engaged in them and create opportunities for their further advancement. Secondly, a new economic system was also to be established dedicated to the development of the national economy. The new economy could assume one of the many possible forms. But our Constitution envisaged a modern economy which would provide equal opportunity for participation to all the citizens. There were two important conditions for achieving this. Firstly, it was necessary that all citizens should have an equal opportunity for acquiring necessary skills for participation in the new economic system. It was on this account that compulsory education for all children upto the age of 14 was to be provided within a period of 10 years. Secondly, even after such preparation a person could expect to get an equal opportunity for participation in the economic system only if the new means of production were under social control. Accord-

ingly, public sector and cooperative institutions were to be given the highest position and the private sector was relegated to a secondary position in the new economic system.

1.3 Thus, broadly every citizen can be expected to make a place for himself as an equal partner in the new economic system according to his intrinsic capabilities. But lest primordial instincts may overwhelm in competition for development the Constitution specifically prohibits discrimination in any form on the basis of caste, religion, region, sex and such like. Ordinarily all these provisions should have been adequate for establishment of an equitable system. But they could prove to be inadequate in the context of our social situation. It was, therefore, considered necessary to give special attention to the backward classes. Accordingly some special provisions particularly in favour of members of the Scheduled Castes and Scheduled Tribes were considered desirable and the principle of positive discrimination was given an important position in the Constitution.

1.4 If these Constitutional provisions were implemented in their true spirit, it was expected that the processes of equity would get strengthened as the traditional vestiges of inequity faded out. It was thought that after some time there may be no need for positive discrimination in favour of the backward classes. Therefore, political reservation for the Scheduled Castes and Scheduled Tribes was initially kept only for 10 years. There was, however, no time limit for reservations in economic opportunities. Decision in this regard could be taken according to the emerging situation. The Constitution itself envisaged appointment of a Commission after 10 years of its enforcement for assessing the conditions of the Scheduled Areas and Scheduled Tribes so that the entire issue could be reviewed afresh.

1.5 A variety of programmes were initiated soon after Independence for the welfare and advancement of members of the Scheduled Castes and Scheduled Tribes. Some benefits have also accrued particularly in education. Many people belonging to these communities entered Government services but the condition of the bulk of the people has not improved. In many cases their condition has further deteriorated. The main reason for this was that the entire economic system of our country has been moving in a way such that inequality has increased instead of decreasing and continues to increase. A sort of dualistic or three-tier economy is getting established. On the one hand, there is a new world of well-to-do people who belong to the modern sector. On the other hand, the dichotomy within the traditional sector of our economy is accentuated.

ng with people having command over resources forming one group while the resourceless people comprise a different world of poor.

1.6 When inequality is increasing in the country all sections of population are trying to acquire as large a share as possible for themselves in the new wealth and new opportunities. Members of the Scheduled Castes and Scheduled Tribes have obviously a claim therein. The result is that it has become necessary not only to continue with the policy of positive discrimination, which should have faded out if the basic egalitarian spirit of the Constitution were honoured, but it has become necessary to increase its scope. It was in the context of this changing situation that I had raised some basic issues in the previous Report and made extensive recommendations. In spite of all this there is no denying the fact that it is an irony that it is necessary to press for a share in favour of weaker sections in the gains of the inequitous system which in the ultimate analysis cannot be anything but the proceeds of exploitation of other poor belonging to the same groups who remain at the bottom.

1.7 It is clear that even if the policy of positive discrimination, which has claimed maximum attention so far in relation to the welfare of the Scheduled Castes and Scheduled Tribes, were to succeed fully, it could benefit only a small section of these communities. On the other hand, if inequality continues to increase in our country or continues even at the present level, the maximum damage will befall members of these communities themselves because their condition is already the worst as in the case of the Scheduled Castes or because they are facing the most severe backlash of development as in the case of the Scheduled Tribes. Therefore, even though recommendations were made for extending the scope of the principle of positive discrimination, greater emphasis was placed on basic structural changes in the economy through formulation of equitable policies and their effective implementation besides attending to the immediate problems related to wages, right over land, protection of traditional occupations and such like.

1.8 There has been no significant change in the general situation after the submission of the last Report. However, the Central Government have decided not to dereserve the reserved vacancies in services and launch a special drive for filling the vacant positions. But the scope of this measure is rather limited. Moreover, two new institutions at the national level have been created, viz., Tribal Cooperative Marketing Development Federation of India Limited and National Scheduled Castes and Scheduled Tribes Finance

and Development Corporation. These institutions have just started working. There has been no significant change in relation to any other issues referred to in my previous Report.

1.9 It may be necessary to state here that the review in the previous Report covered a period of seven years. There were some notable successes during that period the details of which were also given. But so far as implementation of many a programme was concerned, it was not only found deficient in many regards but in many cases the programmes themselves were defective. There is no indication so far if any corrective measures are being taken for the Eighth Five Year Plan. The most serious issues in that Report related to the Constitutional provisions. In many important matters not even the first steps have been taken even after 40 years of the adoption of the Constitution. Moreover, there are a number of cases in which the State itself is responsible for violating Constitutional provisions. Non-action on such grave issues even after their reference in the Report cannot but be said to be gross violation of the Constitution. It is also regretted that this Report has neither been discussed in Parliament nor in the State Assemblies so far. In this context, it can only be expected that the situation must have remained the same as was the case during the previous seven years, if not deteriorated as has happened in relation to exploitative processes.

1.10 Another important issue had come to the fore in the last review. No information is being collected on many an important issue. I have sent a set of new proforma to the State Governments so that a realistic review could be made of the Constitutional provisions. It has also been urged that the information may not be sent just in a raw form after collection. It should be considered in detail first at the State level. Whatever important issues arise in that review, the Government should send their own reactions and also the full details about the action taken thereon or likely to be taken. Thus, it is hoped that the Report will not be a mere compilation of figures, ideas and good wishes but will become an integral part of the process for social equity and a basis for immediate intervention and formulation of long term policies. This new process of review will begin with effect from the review year 1988-89 about which information has been received so far only from a few States and that too rather scanty. It also appears that the States have not appreciated the importance of indepth review at the State level. I hope that the next Report will be an indepth and realistic review in pursuance of the Constitutional provisions.

1.11 The most important question in the last Report related to the command over natural resources and their use. Some aspects of this question were also discussed. But in view of the importance of the question it was thought that it deserved a special report. It appears that the situation in this regard has deteriorated in the meantime. In reality the questions about command over resources, their use and entitlement of people in the gross national product not only affect the livelihood of common man but are vital for the right to life. It is in this context that a detailed review of command over resources has been attempted in the present Report. It involves the review of means of livelihood of people and their right to life.

1.12 This Report concerns the right to life of the common man. Therefore, I have tried to address the same to the common man so that he can himself understand as to why his condition continues to deteriorate in spite of incessant enunciation of great principles of social equity and promises at all levels. Ordinarily the Report after being presented to the President is placed on the Table of the House. It is followed by a debate. Finally the Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes tries to see that its recommendations are implemented. It is clear that the situation has been deteriorating instead of improving, notwithstanding the above elaborate formal process. The main reason for this is that the net effect of operation of the system as a whole is adverse. The ordinary people for whose welfare and protection elaborate Constitutional provisions exist and about whom this Report is made, are not even aware about what happens at the higher levels and the nature of the other processes which concern them vitally.

1.13 I have considered it necessary to discuss another special issue in this Report. After all if those persons, who have been specifically charged with certain responsibilities under this Constitution, do not act what are the options before the people? I had clarified at some length this serious issue in my last Report. For example, the Governors have failed to discharge their responsibilities in relation to the Scheduled Areas. The Central Government have failed to issue directions even in cases where the Constitution was clearly violated. The courts are helpless because either no laws have been made or their attention has not been drawn to the problems. The National Development Council has not found it necessary to consider this important issue in its totality and in depth. Similarly, the interests of members of the Scheduled Castes are linked with land and wages about which there is

lack of sensitivity if not a state of helplessness. It is now necessary to consider seriously the options which the people have in this situation.

1.14 This question does not concern only those who are victims of the exploitation or irresponsible behaviour of the system but all those who are responsible for operating the system and also those who are co-sharers in the benefits of the modern system. I have specially given in detail the reactions of the people in many areas against the inequitous processes of the system and have also discussed as to what the people can and should do in such situations. I hope that the Government will make necessary arrangements so that this Report in which Constitutional rights, the attitude of the system in that regard and the reactions of the people and what can be done by them in the context of Constitutional provisions, have been discussed, reaches the concerned people in a form and language which can be understood by them.

1.15 I have not made formal recommendations in this Report. The recommendations made in the earlier Reports, particularly the Twentyeighth Report, are quite extensive and if they are implemented the condition of the Scheduled Castes and Scheduled Tribes can be expected to improve significantly. But the examination of the question of command over resources in this Report makes it clear that the weaker sections of the community, particularly members of the Scheduled Castes and Scheduled Tribes, cannot get justice in accordance with the spirit of the Constitution unless there is basic change in our perceptions and the entire legal and formal system. It is true that this change cannot be effected in a day. But what is important is the process of change. The very nature of the system today is against their interests. Our entire legal system has not got out of the colonial mould. The right to life of the people has not only remained ignored but no attention has been paid to the same. A beginning can be made for this basic change. It is clear that a beginning must be made straightaway at those points where the spirit of the Constitution and the human rights are being violated. A serious discussion is, therefore, necessary on the entire Report and action must follow on those conclusions arrived at so that the spirit of the Constitution can be honoured and people can have justice in all spheres of life.

## INEQUALITY, DEPRIVATION AND SOCIAL JUSTICE

Inequality is increasing in our country at a fast rate. In this milieu the condition of the Scheduled Castes and Scheduled Tribes is bound to deteriorate at a still faster pace. Therefore, the first point which we must consider is how it is that we are moving in the opposite direction notwithstanding desirable provisions of all description in the Constitution. How is the inequitable system prospering and inequality increasing? Some things are quite clear. The specific directions in the Constitution for termination of inhuman traditions and inequitable practices have not been followed. Similarly exploitation in various forms has not only continued even after adoption of the Constitution but has got accentuated. On the other hand, the benefits of new development have been largely cornered by small urban organised and educated classes. A variety of other undesirable elements have gradually joined this new privileged group. Now all these elements together have got organised in the form of a big interest group and it appears as if the entire economic system is in their clutches.

2.2 The organised sector in our country has not been content only with cornering for itself the benefits of development. It has taken undue advantage of its authority and not allowed the entire unorganised sector to receive its due share in the benefits of new development. On the other hand, the processes of deprivation of the unorganised sector have deepened through a variety of subterfuges. Further, it is also noteworthy that only those people have been able to enter the organised sector who either occupied a privileged position earlier or who got the opportunity of education. In this way largely members of higher castes acquired command over this sector and the place of the Scheduled Castes and Scheduled Tribes has remained limited to reserved positions, the other segments of the economy being largely out of their reach. Therefore, most of members of the Scheduled Castes and Scheduled Tribes alongwith other people in the unorganised sector are obliged to face and are facing the process of deprivation and exploitation in an equal measure or even in worse forms.

### Many forms of deprivation

2.3 Deprivation and exploitation get expressed in numerous forms in the present system. The first well known form is open loot and thuggery. There is, on the face of it, no place for open loot and thuggery in the modern system. But even then this is an experienced reality for the poor, particularly members of the Scheduled Castes and Scheduled Tribes who are facing it incessantly. Their economy, therefore, is getting shattered. But the most terrifying facet of modern system is indirect expropriation and exploitation. These processes are so deep and insidious that ordinarily there is not even a realisation about the same. They operate in numerous forms. First of all, whatever may be the occupation which the ordinary people may be following and whatever may be the skills required for the same, the skills themselves are not recognised so that the entitlement of these people may be reduced to the minimum. The most unjust and regrettable example of this is the work relatable to agriculture. The agricultural labourer is considered to be unskilled and the rate of agricultural wages are kept the lowest. But, in contrast, members of the new system get their own skills valued arbitrarily. For example, the person who pushes the button of a lift is a skilled labourer and the person who does reading and writing is deemed to have higher skills. Moreover, even those tasks which have no meaning, for example, advertising and intermediation, are considered to be essential and a heavy cost is extracted for their so-called services.

2.4 The second important form of deprivation is unjust command over means of production and ignoring, even complete non-recognition of the rights of the people over resources. The big differential in the level of technology and capital used deepens this process of deprivation. The most despicable form of deprivation is depriving the people of their command over and access to natural resources including land and forest, on which they have subsisted through the ages. In the end, deprivation takes the form of biological exploitation which is not even alluded to. The poor in the course of raw struggle for survival ordinarily gets exhausted even before attaining youth. In a way he has only one role in the national system—to provide cheap labour. On the other hand, a few people, on some pretext or the other, acquire entitlement over the goods and wealth created through their labour. Indulgence in luxury amidst dire want all around is proclaimed as their right and consumerism is deified as development.

2.5 The process of deprivation can be said to have begun with the establishment of the State itself. After all how does one get resources for running

of a State? Even the king had to impose levies on the toiling people. In other words, after the establishment of the State the ordinary people had to give away a part of the fruits of their labour to the rulers for running the same. But in the earlier days the scope of the authority of the ruler in the real sense was not very large, it did not extend to the entire life of the people. The small communities, in essence, were masters of their respective territories during this period. They were not bothered after they had paid a share of their produce. But the situation today is entirely different. The authority of the State has now replaced rulers and the scope of this authority has no limits. Its interference is all pervasive informing all facets of man's life. Moreover, the State has also assumed numerous responsibilities. It has, therefore, become very bulky.

2.6 The new situation is also quite different in one more respect. The production of all descriptions earlier used to be within the village. The town and the city functioned often as centres of trade or administration. But the city in the new system has now become a centre of production as well as of numerous services. A special feature of the city system is that it is organised. The State administration itself is in a way a part of the organised sector. On the other hand, the village society is more or less unorganised and, therefore, rather weak. In contrast, the organised sector has become very powerful and is increasingly becoming more and more powerful. There is growing concentration of both economic and political power in the organised sector which is being exploited to the maximum.

2.7 Another important feature of development in our country and associated matters such as the way of life, behaviour pattern or the perception about life itself, is that there is blind copying of the West. Consequently, whatever is happening in the organised sector or whatever is useful for it acquires great importance. In this milieu, even the fact that the organised sector concerns only a small segment of our population and the common man is outside it, is not realised. Therefore, even a realistic picture of the life of the ordinary man and his problems does not get presented anywhere. There is a lot of talk, at that loud talk, about his problems but they do not get the importance in real sense, some of them remain completely unnoticed.

2.8 Another facet of the new economic system is that it is being built from above. Consequently, everything concerning the people, their skills, their knowledge and their rights, remains unappreciated. As we will see later, the most skilled person of our economy has been deemed to be unskilled

and the knowledge of the common man as ignorance. No importance is given to the role of traditional artisans. No note is taken of the fact that it is the farmer who has full knowledge of each field in his village and puts the same to the best use or it is the tribal who can identify every plant of the forest and uses the same optimally. Consequently, the system is keen to impart some skills and give some knowledge to these highly skilled and knowledgeable people which do not have much relevance in this situation or even any intrinsic worth. Thus by non-recognition of the skills of the people and their knowledge, which constitute the real strength and the invaluable treasure of a nation, the rich national heritage has been reduced to nullity. This is the biggest tragedy of our country. This is the root cause of the sense of insignificance and inconsequentiality in the ordinary people and their real poverty.

#### Deprivation and the organised sector

2.9 Thus, the distance between the organised and the unorganised is continuously increasing. The richest are getting heavily concentrated in one corner of that system. In this milieu all attempts for development and all routes to success lead in one direction only—somehow to join the organised sector. And if somehow that is not possible, then at least get linked with it, or if nothing else is possible then at least touch the same so that the person can have the feeling that he is somewhere in its neighbourhood. A few people do succeed in this attempt. Some members of the Scheduled Castes and Scheduled Tribes are also able to acquire some positions particularly in the segment comprising Government service through the policy of positive discrimination. These successes, even though small, create a climate of hope, however faint it may be, for everyone. There is a feeling that sooner or later and if nothing else at least the next generation will make the grade. It is this combination of success and hope which help in providing stability to the present system notwithstanding its intrinsic inequity.

2.10 But this climate of success and hope is now changing fast. Firstly, the new opportunities in the organised sector are not expanding at a fast rate. Secondly, those who have already entered that sector have made it like a close preserve for themselves. Moreover, their women after education are entering the employment market claiming equality in all spheres so that no place is really left for others to enter. Thus, in many cases, particularly for the Scheduled Castes, Scheduled Tribes and other backward classes this hope is getting converted into disillusion.

2.11 The reaction and even rage amongst the people who face disillusion after failure and who are victims of a variety of exploitative processes are natural. This reaction has become explosive at some places and is also assuming sometimes violent form. But they are very weak in the face of the might of the State and are, therefore, helpless. Secondly, the system itself adopts a strategy of conciliation to deal with this discontent. The leadership is invited to join hands and work together for the common goal of national development.. The leadership and even people who should know are taken in. They become supporters of the organised sector and gradually get assimilated. In this way the immediate problem is resolved through cooption of some of the discontented from the unorganised sector. Some others amongst them also became hopeful of following their leaders and joining them. But the system remains unchanged. There is no difference in the condition of the common man. In fact, his condition continues to deteriorate.

2.12 There are two important pillars of the strength of the organised sector. Firstly, the State authority itself is an integral part of the organised sector. The authority of the State is expressed in the form of Constitution, laws and numerous institutions established for carrying on the functions of the State. The method of functioning of the organised sector is also the same as that of the State. They are familiar with the method of functioning of the State. Therefore, there is no dissonance or contradiction between the State system and the rest of the organised sector. They more or less work as one whole.

2.13 The second pillar of the strength of the organised sector is its role in development. Having accepted the way of life of the Western countries as an ideal, the paradigm of development of the West has been accepted as the possible paradigm for our own country as well. The so-called modern sector is deemed to be the leading sector in new development. The hope of the entire country rests on the progress of this sector. Therefore, whatever may be necessary for its progress and advancement is deemed to be right uncritically, without even examining whether it is necessary or not. If someone dares to raise a question, he is silenced by dubbing him as antidevelopment, reactionary or die-hard.

2.14 Those who work in the unorganised sector are completely helpless in this new system. They have no role whatsoever even in relation to the formulation of the policies about the functioning of their own sector and its cost benefit or in implementation of its policies at any level, not

to speak of a role and responsibility for guiding the entire system. In fact, they do not have any knowledge of functioning of the new system. Whatever comes from the State and the organised sector is right and even desirable. It is in the form of a mandate which cannot be reversed, about which there are no alternatives but to comply; it has the authority of the 'written word'. Thus, the modern system of the organised sector has acquired complete control of the economic system of the entire country.

2.15 Even though there is more or less full consonance between the State authority and the rest of the organised sector, it cannot be said that there are no occasions of conflict of interests between the two. The conflict of interests, however, does not cross a limit since both of them are part of the same system. The issues usually are resolved in a way that none of them is a loser. Moreover, members of the organised sector have also adopted a number of contrivances for protecting themselves against the malfunctioning of the State. Firstly, since they are organised they are able to come together for facing any misuse of authority. For example, the police cannot harass even a humble clerk because it is feared that in such a situation they may be gheraoed. Similarly where the system itself is not functioning well, they get special arrangements made for themselves. For example, there is a system of reservation to avoid crowding in the trains; cooperative stores are set up to avoid long queues. What happens to the remaining people is not their concern. Finally the members of the organised sector have pitched their own entitlements at much too high a level. While no member in this group is poor, even the smallest amongst them is able to meet his ordinary requirements in full. No one amongst them is really worried about tomorrow which is fully secured. And wherever it appears that there may be a cut in their entitlement due to malfunctioning of the system, a suitable cushion is created for the same. For example, contractors assume that they will have to give some cuts. Therefore, they add a margin to cover the same and more in their original bids. It is clear that the burden of all this ultimately falls on members of the unorganised sector. In this way the incidence of expropriation and exploitation is multiplied about which they even do not know or they cannot understand.

#### The role of State

2.16 It will be necessary to consider two preliminary things to understand the riddle of deprivation and exploitation. Firstly, what is the role of the State in this process and secondly, how does the net of deprivation and exploitation really expand? If we consider the ideal role of the State, its first task is to establish a system in which all the citizens can lead

their lives according to their own understanding without any trouble. If some issues cannot be resolved mutually or at the level of the community, only then the State should step in to assist them. Thus, the first role of the State is of establishing an order. A variety of laws and rules are made for this purpose the implementation of which is the responsibility of the State.

2.17 The other important role of the State is related to the prevailing inequality amongst the people. In the beginning, when the people lived in small communities, putting a check on the strong and providing protection to the weak was the responsibility of the community which they discharged in accordance with their tradition. However, as the size of the communities increased the relationship between people became increasingly formal and the responsibility of the State expanded. The responsibility for providing protection to the weaker sections, particularly members of the Scheduled Castes and Scheduled Tribes, has been placed on the State by the Constitution itself.

2.18 The State has a third role as well. Sometimes the State assumes the role of an institution and as an institution its position is the same as that of an ordinary citizen, but even in this role it has a distinctive identity of its own. For example, the Forest Department, in its role as the owner of the forest, acts like a zamindar. But the long shadow of the authority of the State is always behind it even as it performs the proprietary functions. Moreover, there is another facet of this role as well. We have adopted the path of planned economic development for our country. Therefore, it is the responsibility of the State to take initiative in matters of development. There are two aspects of this role as well—firstly, planning and secondly, implementation of developmental programmes. When the State undertakes any developmental tasks either on its own or through other institutions it again functions as a person. Thus, the State begins to see its role within the ambit of those institutions and its personality gets circumscribed within the same.

2.19 Thus, there are three main roles of the State—order, protection and development. These three roles are entirely different. It is not always possible for the State and its officers that they can clearly understand the difference amongst these three roles and act in a particular situation after understanding their role and responsibility with objectivity. What usually happens is that when the State discharges the responsibility concerning one of these roles the responsibilities concerning other roles may

be ignored. In the present situation, about which we will discuss in detail later, the responsibility of the State about protection usually either gets ignored or does not get a high priority. The worst sufferers of this neglect are members of the Scheduled Castes and Scheduled Tribes.

#### Five levels of deprivation

2.20 An analysis of the process of deprivation broadly reveals five stages therein. We will have to go a bit back in history to understand these stages. The history of man begins in small communities. In that primitive stage of economy each community had complete command over resources within its own territory. This state about command over resources generally continued for a long time, but there were some exceptions in some cases. For example, the stronger communities sometimes started challenging other weaker groups in relation to their command over resources. The process of deprivation begins with this challenge of command over and use of natural resources. Even this challenge can be in numerous forms. In some cases the challenge comes from stronger communities, sometimes from stronger individuals. But occasionally such a challenge can come from the side of the State itself. The State's control over forest in the tribal areas of our country is a well known example of this process of deprivation by the State. This represents the first level of deprivation.

2.21 Even if a community does not enjoy command over natural resources, an individual can continue to enjoy command over the same as a means of production. In our traditional system all residents of a village have the right to use all natural resources within the geographical limits of that village. The first right over agricultural land was of the person who first reclaimed it for agriculture. If that person or his heir did not cultivate the same, other members of the village community could use the same with the permission of the community. In this way the right to earn a living by tilling land was established which was also socially recognised. But today the situation in our country is that most of the people who till the land do not have a right over it. In this way there is a big divide between the means of production and the labourer. There is another noteworthy aspect of the production process. Production basically comprises three elements, viz., the nature's gift, fruits of labour and the additive due to the use of science and technology. The additive due to advancement in science and technology is the basis of all modern development. But when the weaker gets alienated from the means of production like land, it means that he has no right over the additive. In this situation he loses entitlement over the nature's gift and the additive due to science and technology.

This is the second level of deprivation.

2.22 Even after the right over means of production is taken away the worker still can claim due entitlement for his labour input. For example, the State fixes the price of collection of forest produce in such a way that the person who collects it may get full wages even though he may not get the full value. Similarly the right of the agricultural labourer may not be recognised over the full produce of the land, yet he may be entitled to a reasonable wage. This is the basic principle of determination of minimum wages, but usually it is seen that this does not happen. The position of the worker becomes increasingly weak after he loses the command over means of production. In this situation, in course of time he does not get even full entitlement for his labour. In the end, his wages become so low he is not even able to feed himself. This is the third level of deprivation.

2.23 The story does not end here. When a labourer does not get reasonable wage he has to depend on others for maintaining the family. At this stage he may have to bargain even his freedom for work. In this situation he is forced to work at the command of others. He becomes a bonded labourer which is a form of slavery. In this situation exploitation assumes the form of biological exploitation. The role of workers in the society is reduced to that of being born to work to the maximum extent possible and provide a substitute before he passes away. This is the fourth level of deprivation.

2.24 The fifth and the final level of deprivation is socio-psychological. At this stage people accept the inequitable system as legitimate. They accept it as their fate. They have nothing to complain against the system or against any individual. If there is a rich person, that is his luck and he has a right to enjoy the same. It is here that the poor lose self-confidence, self-respect and a sense of pride in themselves. A variety of myths are created to strengthen this inequitable system and make it permanent. The most effective form of this has been the principle of karma and belief in rebirth. A member of a Scheduled Caste has nothing to complain because what he is suffering is the result of his past deeds. And he cannot revolt against that system because he is concerned about his next life. Whatever he is suffering in this life he accepts but he must work for making the next.

2.25 The people who have been living in the proximity of nature and leading a free and happy life with pride in themselves, when caught in this web

of deprivation lose their entitlement and in the end become destitutes and untouchables. Members of the Scheduled Castes and Scheduled Tribes are struggling at different levels in this nefarious process. It will be essential to cut the magical web if a society based on principles of equality, justice and fraternity is to be established. The State has been given by the Constitution the responsibility of protecting the interests of the weaker sections and their development. This responsibility can be discharged only by cutting this web. How this should be made possible is the biggest question which we, as a nation, face today.

## SOCIAL DIGNITY AND PERSONAL PRIDE

All the five levels in the process of deprivation described earlier are present in our country and are gradually becoming increasingly sharper. It will be necessary to consider separately in depth the issues concerned with each level of deprivation for preparing a suitable strategy for effectively countering that process. We will begin our discussion with the last level, that is, socio-psychological. The most important question of any society is about the personal honour and dignity of its members. The honour and dignity of an individual depends on his work, the recognition of his work, the right over the means of production and their entitlement in the economic system in general.

### The end of self-governing system and entitlement

3.1 It is well known that the position of members of the Scheduled Castes in our traditional system has been the worst. They were assigned the lowest rung in the society. Moreover, they were burdened with the most uncongenial and hard tasks. Even then the village was a socio-economic unit and members of the Scheduled Castes comprised an integral part of that economy. They had a definite share in the produce which was determined according to the tradition. All natural resources including agricultural land initially were under the command of the village community. Every person had a right to use the same for making a living. This system in its ideal form continues to prevail in the tribal areas. But in many places stronger sections of the community gradually acquired exclusive control on some resources such as good agricultural land. But even in this stage other members of the village community continued to enjoy more or less equal access to all natural resources other than agricultural land. This was the general situation in our villages before the advent of the British.

3.2 Another important feature of the village life before the British was that all sorts of personal disputes were resolved within the village. One thing at least was assured in all decisions at the village level that the truth was established in each case and all decisions were strictly in accor-

dance with the tradition. It was, however, true that the traditional system itself was unjust in many respects. Nevertheless, the self-governance of the villages had its own merits.

3.3 This system of self-governance in the village was consciously broken during the British rule and an exotic formal system was superimposed on the entire country. It had disastrous consequences for the village community and its full implications are being realised only now.

3.4 Some features of the administration introduced by the British were progressive which deserve a special mention. Firstly, peace was established throughout the country. Secondly, all people in principle were deemed to be equal before the law. Thirdly, the administration was expected to be neutral in dealing with the people and any discrimination against any section was considered to be wrong.

#### Consequences of weakening of the system

3.5 There has been a significant change in these roles of administration after Independence. The first and the most important thing is that the law and order situation in the country, particularly in the village, is not good. The commanding influence of administration with regard to maintenance of order has been reduced and is continually getting further reduced. Moreover, in many respects administration is not neutral now; the stronger sections of the community are being encouraged, if not being openly supported. In this milieu members of the weaker sections of the community, particularly members of the Scheduled Castes, have got isolated. It is true that now these people themselves have got better organised. Nevertheless, the real situation today is that they have to face the oppression of the system at the one end and of the stronger sections of the community on the other. The exploited and the deprived have no honour, have no dignity. They have to struggle in an extremely hostile setting.

3.6 The other sad consequence of the weakening of the system concerns the command over and use of natural resources. The natural resources, and agricultural land in particular, had been deemed to be personal property during the British period which had the effect of ending the traditional entitlement of the common man over the same. We will discuss this issue in detail later. But the resources, which were not personally owned, were kept under the vigilant eye of the administration while the ordinary people could use the same for making a living. With the weakening of the administration the supervision over these resources collapsed. In this way the command

over resources by the community got terminated during the British rule and the administrative vigilance thereon ended after Independence. In this situation the stronger sections of the community started grabbing these resources through a variety of subterfuges. In some cases they openly violated the law and in some others they acquired even legal titles through the connivance of small State functionaries. In this state of near lawlessness the rights of the weaker sections of the community gradually declined and they have been rendered still more resourceless.

### Self-governance in tribal areas

3.7 The situation in tribal areas is somewhat different. In many tribal areas the general administrative system was not extended before Independence. Therefore, their traditional system of self-governance continued. In some areas even though the exotic system was introduced, it did not have much effect because the tribal people lived in forest and hilly regions which were out of reach of the administration. The situation in these areas has, however, changed after Independence at a fast pace. The main reason is that the tribal areas are rich in all those resources which are needed by the new system. The tribal areas have been opened up speedily primarily for exploitation of these resources for development. As the inaccessible regions are opened up a flood of Government officials, traders and contractors ensues. The formal administrative system, which earlier had only a notional presence, is now present in full force. This is being done in an entirely routine fashion. It is neither backed by adequate thinking nor has a clear objective. Simply because the system exists in the so-called advanced areas it must be extended to the tribal areas as well. Moreover, even though it is known that the system is proving to be detrimental to the tribal interests there is no attempt to find a suitable alternative. The traditional tribal system is under severe strain due to the pressure of this incongruous system; it is collapsing.

3.8 There is deeper significance of the self-governing system amongst the tribal communities. Every community has a natural right to manage its own affairs; this right is autogenous. It is this free will which is crucial for engendering a sense of dignity in a society. And pride in the self and dignity are the essence of community life.

3.9 Every community in the world considers itself as unique and is proud of this fact. Such a sense of pride is possible only when the community is free to manage its own system and the people know that they themselves are the arbiters of the path of their lives. When a society is not free

to guide the course of its own system, what can be the meaning of self-respect and where is the question of personal pride? It is in this respect that the greatest injustice has been done to the tribal people, which continues unabated even today. In the tribal areas not only the traditional system of the people has been ignored but an exotic system has been superimposed without much thought. Consequently, everything which they call their own is wrong and the ordinary tribal has become a criminal as per the norms of the formal system.

### Criminalisation of the tribal society

3.10 The criminalisation of entire communities in the tribal areas is the worst blot on the liberal tradition of our country. The irony is that this has been happening and is happening in the name of principles and even with loud proclamations about law and the Constitution. And what is more, all this is being done by a system which considers itself as a symbol of equity, rationality and modernity.

3.11 The beginning of this process of criminalisation had, no doubt started during the British period. But not only any attempt has not been made to make a change after Independence but the process became still faster and its form much more hideous. The British had through enactment of a law taken possession of the forests in which the tribal people had been living for thousands of years. And the same laws were superimposed on the remaining tribal areas after Independence. In this way the innocent tribal became an intruder in his own home. Consequently, an ordinary Government official could just physically drive him away. If he refused to move out force could be used. If in the process his hut is burnt and got trampled by an elephant, no offence would have been committed for the official was simply discharging his duty.

3.12 Similar was the story about their lands. His possession over the land, which he may have been cultivating for generations, became illegal simply because the village accountant did not enter his name in his papers. The written word on the paper became indelible which it was impossible to erase. Thus he cannot claim the land as his own which his forefathers may have been cultivating for ages. He has no right against a person who on the basis of paper authority may come and remove him or simply push him out.

3.13 This is so far as land and property are concerned. The situation is similar in social matters as well. Even when a tribal prepares his traditional brew according to the custom of his clan, offers it to his deities and then consumes it, he will still be an offender before the law. The reason is simple. In accordance with the law of the State he should not drink because there may be prohibition in that State. Or else where prohibition is not in force, he must drink the liquor from an authorised shop because he has no right to prepare his own. In either situation he is an offender; he could even be jailed.

3.14 Similarly he may be held guilty of breaking most unknowingly, countless contracts simply because he might have put his thumb impression on a paper without understanding what was written on it or even without caring that it was a blank sheet. And after he has gathered the heavy load of all these crimes he misses even the right to defend himself simply because he does not know where he could go. And if somehow he is able to reach the doorstep of the temple of justice, he may discover that it was rather too late. He may have never heard of or even thought in the wildest dreams of those strange laws under which he may be booked. The system moves on according to its own ways. The Parliament and the legislatures continue to make laws; the Governments continue to frame rules; and it is presumed that they are all in order, they become known to everyone the moment they are passed and it is their duty to abide by the same. It is not even realised that the simple tribal living strictly in accordance with the norms of his social system becomes a criminal even without his knowledge.

3.15 Thus, in the eyes of modern system in a number of areas the entire tribal communities have become criminals. Any tribal can be apprehended in any case and booked under a law. Where is the question of dignity and self-respect for such a person? There is no wonder if in this situation the new system terms the tribal as poor, ignorant and may even pronounce that he is uncivilized. The truth is that development itself becomes the biggest enemy of the tribal society. Can the very existence of the community and their honour be put on stake for the so-called development? And can there be a price tag for the dignity of the people?

3.16 The most astonishing thing is that this anomaly about the tribal situation is universally known. Still the first reaction at all levels always is to justify the new system and to prove that the tribal is on the wrong. It is accepted that the tribal community should change and mould itself so as to be in harmony with the frame of the new society. And an attempt

is made to make him realise that this is the real meaning of development. Thus, in the first instance no action is taken to correct that basic dissonance and if some attempt is made somewhere somehow to that end, then no one knows where it may get stuck on way. It was in this context that I had made a reference about the excise policy in my last Report which I would like to refer again with some new facts.

### The noose of excise

3.17 The basic intention behind the Constitutional provisions in relation to the tribal areas is that all the laws should be framed in accordance with the need of the people living there. It is possible that there may be some valid objections against a total change in the modern system even for the tribal areas. But everyone will readily concede that there cannot be any objection whatsoever at least on one count, that is, the law of the land must not come in the way of social custom of the tribal people. Yet the tribal society continues to suffer due to the noose of the excise system which has remained intact even after Independence.

3.18 Drinking is a part of the social life of the tribal people. For example, even today the first thing which a child is given after birth amongst the Gonds of Bastar is a few drops of Mahua brew and that is also the last thing which a person is given after he is dead. But the British interfered with the social custom of the tribal people about drinking and introduced a system of exotic liquor vending. There were two reasons for this change. Firstly, the British were keen to subjugate the tribal people which had proved to be the most difficult task. They had to face incessant rebellions in these areas and were really harassed. They somehow or other wanted to bring the tribal people under their firm hold. The best device for doing this was to introduce liquor and induce drunkenness. The excise policy in the tribal areas followed by the British was like their opium policy in China.

3.19 Secondly, the tribal people lived in forest and hilly regions. There was no permanent cultivation there. The articles found in these areas did not have much value then. The easiest way to raise revenues from the simple people living in these inaccessible areas in that situation could be through sale of liquor to them. The British policy succeeded on both these counts, but in the process the tribal community was ruined.

3.20 A Commission (Dhebar Commission) was appointed in 1960 for enquiring into conditions of the Scheduled Areas and Scheduled Tribes under the

provisions of Article 340 of the Constitution. The Commission severely criticised the continuance of the excise policy, introduced during the British days, even after Independence. They recommended adoption of a new policy. They recommended that the tribal people might be allowed to prepare their own drinks according to their social custom, but the Government did not pay any heed to this recommendation and the situation in the tribal areas remained the same.

3.21 It was in 1974 that the Central Government specially reviewed the excise policy in the tribal areas and formulated a new policy wherein the recommendation of the Dhebar Commission was fully accepted and some new elements were also added. There were four main points in this policy:

- (i) The tribal people should be allowed to prepare their traditional drinks for personal use.
- (ii) Commercial vending of liquor in the tribal areas should be stopped.
- (iii) Vending of liquor in the non-tribal enclaves, wherever necessary, may be done only through Government shops.
- (iv) The management of all excise matters at the village level in the tribal areas should be entrusted to the village community.

3.22 This excise policy has not been fully implemented in any of the States even after a lapse of 16 years. For example, Madhya Pradesh has accepted the first three points but they have not entrusted the responsibility of managing excise matters at the village level to the community. The Government of Andhra Pradesh have entrusted the sale of liquor to cooperative societies in the tribal areas, which has no meaning. The Government of Maharashtra have formally accepted this policy and a number of Government orders have also been passed for implementing the same. But the way this policy has been implemented in Garhchiroli is shocking. It also reveals as to how our administrative system can paint on paper a beautiful picture of formal compliance even though nothing may have been done in the true sense.

#### Excise policy in Garhchiroli

3.23 The Government of Maharashtra have allowed the preparation of traditional drinks for personal use in the tribal areas. Moreover, it has also been decided that all the liquor shops in the tribal areas will be closed down in accordance with the policy of the Central Government. But they did

not accept the suggestion that vending of liquor in the non-tribal enclaves should, if necessary, be done through Government shops. The State Government in principle did not consider it right to sell liquor through Government shops. No decision was taken in respect of authorising the village community to manage the preparation and consumption of drinks at the village level.

3.24 Implementation of the new excise policy started soon after the formal decisions noted above had been taken. Accordingly all the liquor shops in the tribal areas in Garhchiroli were supposed to be closed by the end of the year. Even formal orders were passed to this effect. But the excise contractors appealed to the Government not to cancel their licences and permit them to transfer their shops to other places. The Government conceded their request.

3.25 A very interesting development ensued after this decision was taken. The question then was where these people could take their shops from the tribal areas. The Government had already decided that no Government shop would be established in the non-tribal enclaves in the tribal areas. It meant that vending of liquor in the non-tribal enclaves would be continued through contractors. The old contractors could see a ray of hope only in this decision which could be twisted in such a way that on the one hand the Government decision might get complied with, yet their business might also continue as usual on the other.

3.26 The most crucial question for these contractors, therefore, was as to what should be construed as a non-tribal enclave. Since according to the new Government policy contract system would continue in the non-tribal enclaves, they could transfer their shops there, which had already been agreed to by the Government. It is here that the contractors acted cleverly and the Government did not give attention to the spirit of the excise policy. The State Government took a strange decision. All the market centres in Garhchiroli were deemed to be non-tribal enclaves. The result was that none of the excise shops in the district was closed. Some of them, however, were transferred from ordinary tribal villages to market centres.

3.27 Those who are familiar with the tribal situation can readily appreciate the significance of this formal exercise. Liquor shops even otherwise in the ordinary course are located in strategic larger villages. In the tribal areas market places command strategic position. It is true that bulk of the people living in these villages are non-tribals. But a single village cannot be termed as a non-tribal enclave. The reference to non-tribal

enclaves in the new excise policy was specifically meant to cover big industrial tracts which had larger migrant population of non-tribals. Market centres were definitely not intended to be treated as non-tribal enclaves. If vending of liquor continues in markets in the tribal areas, discontinuance of vending of liquor would have no meaning. A contractor having a shop in a market centre can easily sell liquor in distant villages through his servants and musclemen.

3.28 The traders in Garhchireli have also thought of another device to beat this policy. Some outsiders have moved in and are now living in tribal villages under their patronage. Each one of them takes out a licence for drinking. He purchases liquor on the strength of that licence and stores it which is then sold openly.

3.29 The Government of Maharashtra have not accepted the principle of authorising the village community to manage all excise matters within the village. Therefore, the village community has no right to check the sale of liquor, legal or illegal, in its area. In this situation liquor contractors are a law unto themselves. The Government of Maharashtra on the face of it have accepted the new excise policy for the tribal areas. They have also implemented it. But the sale of liquor through contracts continues unabated. The social and economic exploitation of the tribal people also continues as in the past.

#### People's movement for prohibition

3.30 A new thinking is developing amongst the tribal people in Garhchiroli on the issue of drinking. A movement for prohibition has been launched which has acquired a significant scale. According to the people liquor worth Rs.5 crores is sold annually in their district. And they assert that only a similar amount is spent by the Government on development. The people have placed before the Government a simple preposition that the Government may stop vending of liquor and, if they so wish, stop all developmental work in the district. There will be no loss to their area. According to them if prohibition is introduced, development of the district will follow automatically. The people are worried that consumption of exotic liquor is affecting their health. Women are in the forefront of this movement. After all when a man drinks, the first blow falls on the woman. On the one hand she gets beaten and on the other her children starve.

3.31 Everyone is all praise for this people's movement. Officers at all levels and the Ministers have promised to meet their demands. But the situation in the field continues to be precarious. They have so far received no help from the Government. In fact, on the contrary activists are facing even legal action in many cases. For example, people in many villages have resolved to stop drinking. Moreover, they have decided that if a person in any village flouts this decision and consumes liquor, a penalty will be imposed on him by the community. The contractors are using a number of devices to counter this movement. For example, the contractors have succeeded in getting on their side some of the village people who drink. When the community imposed a fine on them, a complaint was lodged with the police. The police did not listen to the community and intentionally sided with the offenders. The police is questioning the authority of the village community to impose a fine. Similarly when the people launch a movement for closure of liquor shops and do peaceful picketing, the administration takes the side of vendors in the name of law and order.

3.32 When the people launched their movement for prohibition, they had no knowledge about the excise policy of the Centre for the tribal areas. When they came to know about this policy they started asking the administration to implement that policy in their area. It was only in the end that the people came to know that the Government had not only accepted that policy but had also implemented the same. But, as stated above, nothing happened in the field. The people took this matter during 1988-89 to the Chief Minister who once more promised that shops would be closed at the end of the year. But at the nick of time on the close of the year the shops were allowed extension for one more year. People are wondering whether the 'Government year' will at all come to the close sometime.

#### The people's dilemma

3.33 The question before the people now is what they should do in such a situation. It is clear that the tribal people at least have a right to manage their social system. On this point the Constitution is with them. The guidelines of the Central Government with regard to the excise policy are quite clear. The State Government have also accepted those guidelines. But they have been given a clever twist at the level of implementation with the result that its spirit has been lost. The people have tried at all the possible levels but to no avail. When the people decide to manage their own affairs at the level of the community they are told that they have no right under the law to do so. And if they take any action against a member

of their own community they themselves become liable for legal action. They are wondering about the right course which they could adopt.

3.34 I have described in detail this case of excise policy because it touches the personal and social life of every tribal. If a tribal here acts according to his custom he breaks the law, he is an offender before the law and legal action can be taken against him. I would like to state at this stage that any law in the tribal areas, which makes acting according to their tradition a crime, is against the spirit of the Constitution. In this situation if the tribal people do not obey the law and decide to proceed according to their tradition, this action of theirs will be in full consonance with the spirit of our Constitution.

## THE ENTITLEMENT OF THE COMMON MAN

The prestige and honour of a person in the present world is linked with his economic condition. If a person cannot afford two square meals where is the question of his honour and where is the question of his prestige? It can be said in a broad sense that the economic situation of the ordinary people is linked with the total production of a country. A variety of tasks are necessary for production in which all citizens of the country are partners. The form of this partnership can be quite different. Some people work in fields, others in factories, some join the armed forces while others work in offices; one may be a doctor or the other a trader, and so on. Similarly some work with their hands while others with their brains. It is the combined effort of all of them which is responsible for production of food, clothing and such other commodities on the one hand and a variety of services on the other. All these commodities and services together comprise the Gross National Product. Every worker has a share in the Gross National Product. But the real question is how this entitlement in the total production is assessed in respect of different persons who perform such variegated tasks. It is clear that the entitlement of a person will depend on the quantum of his work and the way his labour is valued. The biggest twist in this regard is usually related to the way a person's labour is valued. And here one can find the root of just and unjust distribution.

4.2 The organised sector in our country has command over the entire system. Therefore, what is happening in respect of determination of entitlements is that first of all the entitlement is settled for those who are working in the organised sector. Since the organised sector itself determines the entitlement, the entitlement of its own members is pitched at a level which enables each one of them to lead the life at a reasonable level with comfort. There are struggles for higher entitlements within the organised sector which are mostly not real. The end result of all those struggles is only one, that is, the entitlement of the organised sector in the total production.

of the country becomes still higher.

4.3 The people in the unorganised sector have to be content with whatever is left after the distribution in favour of the organised sector out of the Gross National Product. Therefore, the real struggle on the issue of distribution is in the unorganised sector. In this struggle it is the weakest and the most ignorant who are the worst sufferers. Howsoever hard these people may work, whatever may be their real entitlement, nobody cares. That is why the labourer is not able to get even two square meals notwithstanding his hard work.

#### Inequity in principles concerning entitlements

4.4 I had drawn attention of the nation to this prime issue of social equity in my previous (Twentyeighth) Report. There are two different sets of principles for assessing entitlements of workers in our country. On the one side is the organised sector in which the wage salary of a worker is determined in such a way that the earning of one person in a family may be sufficient for maintenance of the entire family. But this principle is not adopted for determining either the wages of agricultural labourer or that of other workers in the unorganised sector. Where is the equity in a system in which the agricultural labourer, whose fruits of labour provide the basis for all other activities in the world, is not able to feed even his entire family ? The clerk in the office after eight hours' work under a fan has enough entitlement for comfortable living for his whole family. But the labourer who had worked in the open sun and pouring rain for construction of the same very office did not get sufficient entitlement for maintenance of his family. It is clear that our Constitution is against such discrimination. Then how is it that such discrimination exists? There is no reply. Therefore, so far as the entitlement of the common man is concerned, our entire system is not only inequitous but against the Constitution.

4.5 But what is that secret because of which no one has even alluded to this open violation of the Constitution? It is possible that there may have been some misunderstanding about it so far. But there has been no reaction whatsoever from any side even after severe indictment of that system in a Report prepared under the Constitution on issues concerning social equity as per the provision in the Constitution itself. It appears that every person belonging to the organised sector has a vested interest that this question should not be raised. No one can afford to cut the branch on which he is sitting by accepting his own entitlement as inequitous. The people in the unorganised sector have no realisation of the fact that the present system

can be so inequitable and insensitive in matters concerning their sector. They have so far believed it to be equitable. This belief of theirs has to be shaken.

#### Lowest entitlement for agricultural labourer

4.6 Even if for a while we keep aside the question of two different sets of principles for the two sectors in the national economy, the other important question is about the way the value of labour of the people is actually assessed. If we prepare a list of all those tasks according to the wage or salary as fixed for them by the State itself, the agricultural labourer will be found to occupy the lowest position. If one picks up the labour laws of any State, the position will be the same everywhere. The wage of the agricultural labourer will be the lowest. The wage of workers other than agricultural labourers will always be somewhat higher.

4.7 This means that the wage of agricultural labourer is the lowest in our country. The agricultural wage can be said to be a measure for all other wages. The minimum wages for agricultural labourers in our country at present range from Rs.9 per day to Rs.20. But this is the position in law only. It is well known that the agricultural labourer does not even get this wage. His wage at some places like those for Kols and Harijans in Banda District of Uttar Pradesh 5 small measures of jawar of about Rs.2 per day. A person thanks his stars if he gets Rs.5 to 6 per day. The wages of women are less by a rupee or so.

4.8 Why the farmer pays such a low wage is a complex question which we will leave here and discuss later. But here we are talking about principles. Therefore, it is necessary to understand as to how the wages of agricultural labourers are assessed to be the lowest. Many people are demanding higher wages for agricultural labourers. There are a number of movements and even struggles. But how is it that the fact that their wages are the lowest in comparison to all other labourers is not even an issue for serious discussion? This real question is not even raised anywhere. That the wages of agricultural labourer are the lowest is accepted, knowingly or unknowingly, as a valid proposition. And it is here that the roots of inequity are the deepest in our country.

#### The basis for entitlement - Utility for life?

4.9 At the first sight it appears that it will be appropriate to keep in view the utility for a task for life in assessing its value. If a list

is prepared of all the tasks according to their utility for life, is it possible to find something which may have a higher place than agriculture? After all, all others affairs of man's life are dependent on agriculture which sustains their very life. If a person does not get anything to eat, can he do any other work? That is why in our tradition agriculture was placed at the top. But today it appears that we have accepted that agriculture has the lowest place. Therefore, it is clear that the value of work relating to agriculture has no relationship whatsoever with its utility for life. It can be said here that air and water are even more vital for life than food, yet no economic value is assigned to them. Therefore, it will not be proper to link the question of valuation of work with its utility for life. Some other principles will have to be adopted for this purpose.

#### General principles for determining entitlement

4.10 Ordinarily three elements are kept in view while assessing the value of a work, viz., (i) the skills necessary for the work, (ii) the hardness of labour involved, and (iii) the working conditions and the place or work. Now if we prepare a list of all types of tasks in our country, the entitlement for agricultural labour or its value will depend on the place which it will occupy in that list. Let us, therefore, see the position on all these three counts in this regard.

#### Skills

4.11 Labour is broadly divided into two groups -- skilled and unskilled. Sometimes there is a third intermediate category of semi-skilled as well. There are innumerable shades between skilled and semi-skilled. Even amongst the unskilled there are different rates for light and hard work. It is clear that the lowest wage must be relatable to the lightest and the most unskilled work.

4.12 If whatever has been said above is correct, then as the wage of agricultural labourer has been kept as the lowest, it only means that it is not only the least skilled amongst all others tasks in our economy but is also the lightest. The work of an agricultural labourer can be taken as a symbol of unskilled labour. Let us ponder a while on this proposition. Can any responsible person, who has any knowledge about agriculture, say honestly that agricultural labourer is unskilled and his is a light work? It is true that he does not go to a school for learning agriculture. The matter of fact is that those people, who attend agriculture schools or colleges and acquire high degrees in our country do not acquire the skills for doing agriculture. In fact, they are not capable of doing the same. The agricul-

tural labourer and farmer learns his vocation in the school of real hard life and it is there that he acquires the skills of agriculture. When to plough a field, how to handle a plough, how much seed to be sown and at what time, weeding of crops and keeping an eye on the same till these are harvested -- each one of these tasks requires a high level of skill. Agriculture is not a play of novices.

#### Hard work

4.13 If after skills we assess the extent of hard labour involved in different vocations, is it possible to think of any vocation in which a person may be required to do harder work than an agricultural labourer? It is possible that labourers in some factories may be having a harder task to perform. But all tasks in the organised sector generally require much less hard labour compared to the agricultural labourer. With the introduction of machines, and even otherwise, there are numerous tasks which do not require much labour. The liftman pushes the button and the peon just lifts the curtain all through the day. Do these tasks also involve any labour or any skill?

#### The conditions of work

4.14 In the end if we review the place of work and the conditions of work, there is no comparison of agriculture with other tasks in the country. Agriculture is practised under the open sky, whether it is the scorching sun of June or chilly night of December or incessant rain or storm and high wind, agriculture must continue. The farmer cannot afford to miss the correct time. Working in such diverse conditions is not an exception for the agricultural labourer; it is a part of his life.

4.15 Now if we review the work of agricultural labourer in all respects, viz., its value for life, skill, hard work and the place of work and working conditions, then in no respect its place is lower than that of any other work. Perhaps there is no other work which can even be equal to it. It, therefore, easily stands at the top. Then how is it that in terms of entitlement it is treated as the lowest? And how is it that it has been dubbed as unskilled? There is only one explanation. Those who command the system do not wish to acknowledge due entitlement of agricultural labourer. When these very people discuss the traditional system and talk about high principles, they brand that system as inequitable. Members of the Scheduled Castes no doubt were oppressed in that system and they were not allowed to get fruits of their labour. But the modern system, which they themselves are operating, is convinced about the directives of the Constitution; equity

and justice constitute its very foundation and protection of the weaker sections is its responsibility. Then on what basis does such a system assess the entitlement of agricultural labourer as the lowest? The most surprising part of this business is how such laws are passed even after long debates by the legislatures in which agricultural labourer is assigned the lowest position.

#### Injustice with other workers in the unorganised sector

4.16 Those who swear by equity and justice negate the question of due entitlement of agricultural labourers by a simple statement that agricultural labourer is unskilled. There can be no bigger injustice and worse mockery of human feelings. But this injustice is not limited only to agricultural labourers. This is a part of a big conspiracy or a stratagem against labourers which is being sought to be covered carefully under the group of high principles. They have succeeded in this. If we look at other vocations of ordinary people which I had dealt with in detail in my last Report, a similar situation is found there as well. Even though they are not branded as unskilled, their entitlements compared to the value of the so-called skilled workers are so low that they are treated almost like unskilled persons. But when these people compare their condition with that of agricultural labourers, whom they know and about whose work they understand, they are gratified by the mere fact that they are getting at least something more. The person who pays that wage loads him with boundless obligation. Thus, by treating agricultural labour as unskilled and fixing his entitlement at the lowest level, the entitlements of all workers in the unorganised sector stand discounted. Moreover, as we will see later, the entitlement of the farmer himself is reduced to the level of an unskilled worker. Because the farmer and all other labourers in the unorganised sector unknowingly accept the inequitous entitlement of agricultural labourer as legitimate, there is no complaint against other inequitous entitlement nor is there any reaction against the same. That is not all. Because the actual wages which agricultural and other labourers in reality get are much less than the minimum wages, they cannot even dream that they can stake a claim that their entitlement should be equal to that of the so-called skilled workers in the organised sector, if not more. In this milieu their demands get stuck at the level of the minimum wages granted to them under the law. That also appears to them as their due entitlement. Thus, the inequitous minimum wage looks like a legitimate wage.

### Some other questions

4.17 It will be necessary to consider the situation of farmers and agriculture in continuation of the above question of entitlement of agricultural labourers. Whenever the question of raising the minimum wages of agricultural labourer is raised, it is brushed aside by stating the fact that at the moment they do not get even the minimum wages as prescribed under the law. If this rate is increased, from where after all will the farmer pay? Yet another argument was also used. If there is unemployment all around and four persons offer themselves for each available job, the wage rate will get depressed automatically, whatever may be the law. These arguments are presented with great fervour primarily to show that the present unjust and exploitative system is not unjust, it is rational. This is a part of that stratagem in which offence is considered to be the best form of defence. What is surprising is how great scholars and planners, social activists and political leaders accept these specious arguments. If we consider this issue even in a little depth, the hollowness of these claims can be easily exposed -- they have no basis.

### Depressed wages or unemployment

4.18 Let us first consider whether the claim of the people that the wages in our country are low because of unemployment really hold. This is really an illusion. It is wrong to say that unemployment is the cause of depressed wages. The truth is just the other way round. And that is quite clear. In our country it is the depressed wages which are the direct cause of unemployment. If the ordinary worker gets his due entitlement, his income will increase and unemployment will end automatically. I am referring here only to the entitlement of workers. There is a still larger question about his claims on the means of production and natural resources. If they get justice in relation to the ownership of means of production and command over resources their entitlement will increase sharply. We will discuss this question separately.

4.19 We have seen that there are some things in relation to the entitlement of labourers which are wrong in principle. On the one hand, there are workers in the organised sector where the income or the wage of every person is fixed atleast at a level to enable him to support the whole family. And the income of many people in this sector is so high that they do not know what they should do with that income. This is not all. In many families both husband and wife are in regular service or are engaged in other occupations. But the wage of each of them is determined following the same principle. Thus, a few families in the organised sector are able to gather many

more jobs. On the other hand, there are innumerable families where no one in the family has a job which can sustain the whole family. So long as one person in each family in the whole country does not get such a job which enables him to support the whole family, is this system which allows a few families to have more than one job not utterly unjust? But the affluent do not hesitate to call this inequitous system as legitimate through making assertions about individual rights or other high principles.

4.20 The situation in the unorganised sector is just the opposite of that in the organised sector. In this sector it is not even accepted in principle that the wage of one person should enable him to sustain the whole family. If one person in a family were to get the minimum wage for 300 days in a year, his total annual income in many areas will be just about Rs.3,000. He will have to earn at least Rs.6,000 in a year even to reach the so-called poverty line. Thus, at least two persons will have to work even to sustain the family at the minimal level. But here the wage rate is so low that the income of even two persons will not do. Therefore, everyone in a family -- child, old man and woman -- is in search of a job just for earning sheer subsistence. In this situation howsoever low the wage may be, they are obliged to accept it and work. The result is that on an average three persons in a poor man's family have to work to make both ends meet. If all of them do not work, they may remain half-fed or may have to go without food altogether.

4.21 Now if we have an overview of the employment situation in the country, a clear picture will emerge. On the one hand, we have the organised sector where at least one person in each family has a regular employment and in some families more than one person work. On the other hand, in the unorganised sector at least two or three persons have to work just for sheer subsistence. If all this is added it is quite clear that we cannot say that there is no dearth of work opportunities in our country. The only difference is that more than one person in a family in the organised sector do not go out to work because they have nothing to eat at home. They work because they want to earn for greater comforts which are limitless. On the other hand, more than one person in the unorganised sector go out of home for work because they have somehow to earn for their evening meals.

4.22 If the labourer in the unorganised sector gets due wage, which is sufficient for maintaining the whole family, his wife will not go out for work as she is keen to have a home and tend it. The poor will not send his child for work because he, like everyone else, will also like to invest in the future of his child, he will send him to a school. He will also like that his old father and mother rest in their evening of life. Therefore, they will also not go out for work. Thus, instead of three only one person from their poor family will appear on the employment market.

4.23 About 70% of the total population in our country works in the unorganised sector. If all these people get their entitlements a situation will come in which work will be more and workers will be less. In that case unemployment will automatically disappear. In view of the fact that there will be more jobs chasing limited number of workers, the wages will rise and continue to rise. Thus, a new balance would have been created in which, on the one hand, labourers will get their full entitlement while, on the other, those who have acquired entitlements without work will have to do work for really claiming their entitlements.

#### Low wages, unemployment and biological exploitation

4.24 Thus, what is termed in our country as unemployment is really not unemployment. Unemployment is a ploy for low wages and is a result of a deep conspiracy against the ordinary working people. Its only objective is that the workers in the unorganised sector, particularly the resourceless, should be given only that much wage with which they can somehow survive until such time as they can contribute the maximum in the form of work in exchange for a bare minimum wage. The reality is that in this system the worker is being subjected to biological exploitation. It is regrettable that no attention has been paid to this abominable aspect of our economic system.

4.25 The biological energy is maximum at the early age. The proper use of this biological energy is around development of the living being until it reaches the stage of maturity. It will be proper to put this energy to other uses only after full development of the personality. It is on this count that the practice of labour at lower ages has been declining with the advancement of human society and the time for initial preparation for entering the life has been increasing. In the present situation the period upto the age of 20 to 25 is used for education and such other tasks and it is only after this age that it is considered proper for a person to enter a vocation.

4.26 But the age at which the poor people start working in our country is

very low. Such a person is exhausted before attaining maturity. The system is concerned with this person to the extent that his work-input should be maximum in exchange for a minimum wage and in the end he should provide a substitute.

4.27 Similarly the position of work amongst women in the unorganised sector is entirely different from that in the organised sector. Women in the unorganised sector are given preference in jobs because they work harder and they can make good with lesser wages. Our elite describe this as participation of women in economic activities and accept it as a characteristic of development. The truth is that the employment of women and children in the unorganised sector is a despicable form of biological exploitation. The system not only rationalises this despicable exploitation of women and children through depressed wages in the name of unemployment as rational but does not hesitate to call it, under the given circumstances, as desirable.

#### Wages and the farmer

4.28 Now the next question is about the wages of agricultural labourers. It can be said that the wages of some of the labourers in the unorganised sector, e.g., of those engaged by Government contractors, can be immediately raised. The labourers, who should belong to the organised sector, are pushed into the unorganised sector by bringing contractors in between. A system can be established in which contract labourers, who at present are not getting their due entitlement, are assured of the same.

4.29 But so far as agriculture is concerned it is claimed that the farmer at present may find it difficult to pay even the minimum wage. In fact, this logic is put knowingly in a reversed order. The income of a farmer is linked with the price of agricultural produce. The main agricultural produce in our country comprises foodgrains. The prices of all varieties of foodgrains are fixed by the Government. In determining the prices of agricultural produce, besides other inputs, labour cost is also included. The truth is that labour cost is a major factor in determining agricultural prices. Therefore, the agricultural wages contribute the most in the determination of agricultural prices. It is here that there is a twist which has to be clearly understood.

4.30 The Government fixes the wages of agricultural labourers. Since agricultural labourer has been deemed to be unskilled so far, his entitlement is kept as the lowest. It is obvious that if agricultural prices are fixed on the basis of such inequitous entitlement, the rates will be very depressed.

The relationship between the two is clear -- lower wages, cheaper foodgrains. When the farmer gets a low price for his produce, he is helpless and accordingly he pays the labourers lower wages.

4.31 It is here that the owner cultivators and those who speak on their behalf forget that after all in our country the maximum labour participation in agriculture is that of the farmer himself and his family. The entitlement for this labour input of his own and the family is realised by him in the form of value of his produce. And the entitlement for the labour which he puts in for producing the grains is equated with the entitlement of agricultural labourer whom everybody accepts to be unskilled and for whom the minimum wage is considered to be legitimate. The result is that the entitlement for labour input for all people engaged in agriculture is the same. The rate is the same whether the worker is the farmer himself or an agricultural labourer. And that unskilled worker cannot claim more than Rs.10 or 20 for a day. That is why when the prices of agricultural produce are assessed according to this principle, these turn out to be so low. The farmer is not able to understand this twist. He accepts it as his luck and the agricultural labourer accepts that low wages are really due to the helplessness of the farmer.

4.32 The truth is that even the minimum wages as fixed by the Government themselves are not taken into account while computing foodgrain prices. Since the agricultural wages in many areas are less than the minimum wage, accepting the minimum wage as the basis for price determination does not appear to be unjust. Therefore, the owner cultivator is not able to get even the minimum wages. In this situation when he pays to the agricultural labourer a wage which is less than the minimum wage, he does not think that there is anything wrong.

4.33 Thus it is clear that the prices of agricultural produce are low because the entitlement of the labour input of farmers and workers itself is kept so low. If these workers get their due entitlement the price of agricultural produce will rise and it will be possible for the farmer to pass on his due entitlement. In this sharing the entitlement of the people belonging to the organised sector will get affected. But if injustice is to end and justice is to prevail, its first impact will have to be borne by the organised sector. After all the seeds of injustice were sown the moment agricultural labourer was treated as unskilled labourer and the factory worker, even the office workers, big and small, were placed much higher. If farm work and agriculture are accepted as skilled jobs, and there is no reason not to treat them as the most skilled tasks, their entitlements will become equal or even more

equal or even more compared to those in the organised sector. If justice is done, the share in the Gross National Product of the people belonging to the organised sector, who have taken advantage of their position in the system and have pitched their entitlements sky high, will get drastically reduced. Therefore, the people in the organised sector will oppose tooth and nail this claim of equality by others. But in any struggle for justice opposition is but natural.

#### Justice to members of the Scheduled Castes

4.34 So long as agricultural labourers do not get their due entitlements the poor, particularly members of the Scheduled Castes, most of whom are landless agricultural labourers, cannot expect justice. The first stage in giving justice is to recognise the skill of agricultural labourer and assign him the status of a skilled worker. Moreover, the principles for determination of wages accepted for the organised sector should be extended to the unorganised sector as well so that the wages of agricultural labourer may be fixed at such a level that his wife and children are not forced to seek work outside, and he is enabled to maintain the family with his wage like other respectable citizens.

4.35 Whatever has been said about agricultural labourers also applies, more or less, to other labourers in the unorganised sector as well although the condition of agricultural labourers is the worst. Members of the Scheduled Castes form a good proportion amongst other labourers of the unorganised sector as well. Their condition can improve only if the entitlement of their labour is properly fixed. In the present situation when members of the Scheduled Castes have nothing but their labour and their skill as their own, the struggle for due entitlement of their labour is the real struggle for justice.

#### Wrong attitude of the system

4.36 I had referred to a number of cases in my last Report as to how our system can be merciless with regard to ordinary labourers. A very bad example in this regard was that of sugarcane harvesters in Gujarat and forest labourers in Maharashtra. The Koyatas who harvest the sugarcane are bonded labourers. But the State Government, instead of accepting this regrettable fact and taking measures to help them, just refused to accept them as bonded labourers.

4.37 In the case of forest labourers in Maharashtra, the Forest Department did not knowingly comply with the law according to which the minimum wages were fixed and continued to pay them about half that rate. This flagrant

violation of the law continued for two years. The most regrettable aspect is that even when, in pursuance of my responsibilities under the Constitution I drew attention of the State Government to the fact that the State Government were not discharging their responsibility in respect of the forest labourers, most of whom belonged to the Scheduled Tribes, no action followed and that Constitutional Report was ignored. Even today the State Government owe the legitimate dues of lakhs of labourers, yet no attention is being paid to those dues.

4.38 The real question here is the right attitude of the system towards the poor. In the last Report I had stated whether any Government could think of non-payment of a single rupee for a single day due to the labourers in the unorganised sector. On the one hand, every political party is promising to give one facility after another to members of the organised sector, while on the other hand there is continuing injustice to the labourers in the unorganised sector even at the level of principles. There is no reference to the fact that the Constitution itself is being violated. This is not the end. Even the wages which are fixed according to these inequitous laws, which are less than their due entitlement, are not assured to them. These are only paper provisions with no concrete action plans to back them up. Even where the State itself can take action or should take action, the responsibility is ignored on one pretext or the other. It does not appear that in the present context the system will be able to give justice to the people belonging to the unorganised sector.

4.39 The ordinary people belong to the unorganised sector. The poor belong to it. Most of the members of the Scheduled Castes and Scheduled Tribes come in the category of poor. Therefore, their interests are linked with that of the poor. If the question of giving justice to the common man is raised in the real sense, the first task in this regard will have to be the fixation of agricultural wages on an equitable basis. He has to be equated with the skilled labourer of the organised sector. If the entitlement of agricultural labourer is justly assessed, the prices of agricultural produce will also have to be raised to ensure that the farmer also gets the due return for his labour. Similarly all the artisans in the unorganised sector must also be given justice. It is clear that if this is done, a new relationship will get established between the organised and the unorganised sectors. Unfortunately the present system in its totality is based on the inequitous relationships between the two. The common man cannot get justice unless these inequitous relationships are changed.

4.40 Thus, the basic question today is whether this inequitous system should be maintained or the ordinary worker should get justice. Our Constitution is clear on this issue. Injustice, in whatever form and in whatever corner of our country, must end. Members of the weaker sections of the community must get justice. Providing them protection is the State's responsibility. Will the State determine equitably the entitlements of agricultural labourers and other workers belonging to the unorganised sector and ensure that they get those entitlements? This is the biggest question today.

#### Right of the common man

4.41 Due entitlement of his labour is, in a way, right to life for the ordinary man. The Government are not able to make necessary arrangements for discharging this Constitutional responsibility. Therefore, workers have a right to take such measures as may be necessary for protection of their Constitutional right keeping, however, within the ambit of the Constitution. Workers and farmers, members of the Scheduled Castes and Scheduled Tribes are struggling at numerous places for this entitlement. There is a clash with vested interests. They are not getting the support from the system in these struggles. Instead the vested interests are able to get the support of the system on one pretext or the other. It is necessary for all those individuals and institutions and also the Government, who have been given the responsibility of protection and welfare of the weaker sections of the community, to ponder over this violation of the Constitution which is continuing in relation to the entitlement of ordinary workers belonging to the unorganised sector. Instead of siding with those who are violating the Constitution, they should support those people the responsibility for whose protection has been assigned to them by the Constitution and protect their interests effectively.

## COMMAND OVER MEANS OF PRODUCTION - 1

Law, Settlement and Possession

Ours is a predominantly agricultural country. The primary means of production in our country has been the agricultural land. Therefore, the struggle about command over land among different classes has been a recurring phenomenon. But a new phase of development started after independence and a variety of other occupations have moved up. The position of other occupations is becoming increasingly more important compared to agriculture. There is also a wide variety of means of production related to the new occupations. Just as entitlement to land is the main issue in agriculture, the entitlement of workers on means of production in other vocations is also being raised as a major issue.

5.2 The question of command over means of production in the organised sector is important. But it does not have a high priority at the moment because the entitlement of the labour of the workers in this sector is much higher compared to the general conditions in our country. But the situation in this regard in the unorganised sector is entirely different. Firstly, the wage rate of the workers in the unorganised sector even otherwise is very low. Therefore, they are doubly affected because of the lack of command over the means of production. I have discussed in detail this question in my last report and a number of recommendations were also made. It is not necessary for me to repeat the case here. The quintessence of those recommendations was that the labourer should have command over means of production and the Government should take necessary action for achieving this goal. I would like to discuss again here particularly the question of right over agricultural land because the fate of most of the poor, particularly the members of the Scheduled Castes, is linked with that right and it is in this regard that injustice in our country at present is the most.

### Transformation of land into property

5.3 I have briefly alluded to the way how the entitlements of those living on land and other resources got gradually eroded. The natural resources according to the tradition of our country had been considered as means of livelihood, and not property. There was a basic change in this regard after the coming of the British. The private ownership on agricultural land was recognised not only in Zamindari areas but also under the Ryotwari system. In this way, land became property and its owner could hire it, mortgage it and even sell the same at will. In this changing context, those who could not stake their claims, were reduced to the status of tenants of the owners or mere agricultural labourers. Thus, the right of the cultivator to earn a living from the agricultural land ended. He became a subordinate of the owner; his direct relationship with land got snapped.

5.4 The Jagirdars, Zamindars and other types of intermediaries were abolished after independence and the right of the tiller over the land was accepted in principle. But in many cases the law was not properly implemented. Therefore, the bulk of the agricultural land remained with those people who were not actual cultivators. On the other hand, most of those who tilled the land did not have a right over the land which they tilled. These land owners now are giving their land directly on rate-contract or for share-cropping. In some cases they are themselves managing their lands through hired labourers. Many agricultural labourers are bonded. In some cases, the introduction of tractors and machines has reduced the demand for agricultural labourers. Of late, cultivation of trees has been encouraged which has reduced the need of labourers significantly.

### Entitlement of tiller on the land - A Basic Issue

5.5 The most important question in agriculture is about the relationship between the tiller and the land. Wherever land belongs to the community, as is the case in many tribal areas, even now, this relationship is clear. Every member of the village community has a right to till the land and earn his living. If the population in a village increases, the first effort is to extend the land under cultivation. If that is not possible, everyone tries to make do with lesser land. The land came under the control of the state after the British derecognised the authority of the community to manage the same. There was stiff resistance in the tribal areas; there were revolts and rebellions at numerous places. It was in the face of these revolts that in many cases their traditional system was allowed

to continue; in some areas it was also given recognition under the law. For example, the traditional system of community control on land was recognised in the entire tribal areas in the North East and also in some areas in middle India like Singhbhum in Bihar after Kol revolt. The movement of Tanabhagats is noteworthy in relation to the ownership of land. They had a very simple question to ask. They used to say that 'the land belongs to God'. We are God's children and we live on the land given by God. Therefore, wherefrom has the Government appeared between the land and the people? The movement of the Tanabhagats had started even before Gandhiji's non-cooperation movement. The spirit of both these movements was the same. Therefore, Tanabhagats joined Gandhiji's movement. But the question whether the new Government could levy revenue on land arose after independence. Tanabhagats reiterated their earlier premise. The Government was Government they said. The Government of Bihar acceded to their demand and a special law was enacted exempting the Tanabhagats from the levy of the revenue. Thus, the Government accepted the direct relationship between the land and the Tanabhagats.

5.6 The concept of private ownership of land established during the British period is having its way even now. In this context, the question is whether our system recognises any right on the land of those who are tilling the same. There are two aspects of this question - first concerning the law and the other concerning its implementation. I will discuss the situation as prevalent on the ground.

#### Written records - People's Helplessness

5.7 The first point in relation to land entitlement is that in the modern system there is need for some sort of written record. The law provides for the maintenance of Khasra and Khatuni for recording of rights and entry in the same is essential for establishing the claim. In this situation, if a person is doing agriculture, then the first question arises as to whether his name is recorded in the revenue record. On the face of it, this appears to be very simple thing. But the implications of this provision concerning record in relation to the right over land have been disastrous. In the beginning, when the people living in a village used to manage their own affairs, it was not necessary to prove on the basis of record about a person's cultivation in a field. Who is cultivating a particular field is known to everybody in the village. Even if some person is able to occupy some land through use of force, even then that fact is not hidden. In other words, the fact about the possession of agricultural land and the related question of the right of a person on the

same were quite clear. There was no possibility of any manipulation on this count. All decisions about these matters were taken in the village in accordance with the people's own understanding. But ever since the Patwari papers came to be treated as proof of the facts like 'who is cultivating the land?' or 'who is the owner of the land?' Courts got the authority to give the final verdict in this regard and there was a qualitative change in the situation and the village system became increasingly weak and the village became fully subordinate of others. Its consequences have been very bad.

5.8 The muddle with regard to the right over the land has been the worst in tribal areas and it is increasing. Firstly, there are no records even now in many areas. Therefore, there is no paper which can give the identification of a land and its ownership. So long as the outsiders did not reach and the people in the village managed their affairs as before, the fact whether the name of a person was entered in the record or not, did not make any difference. People knew the facts and their affairs were managed accordingly. But now the situation has changed and is changing at a fast rate. On the one side, outsiders have come in large numbers. On the other hand, the questions of ownership of land are now decided by the Government officials. In this context, the people are facing a big problem which has to be considered in depth.

5.9 The most serious thing in the tribal areas is that there are many tricky provisions in the law which are beyond the understanding of the people. The land does not belong to the community according to the present law, it belongs to the State. Therefore, if a particular piece of land is not recorded in the name of a person, it is deemed to belong to the Government. The Government can deal with it in any way it pleases. As we will see later, the people living in the forests are the worst sufferers of the consequences of this legal jumble. The other side of the picture is that land title can be acquired simply by getting an entry made. The outsiders have misused this provision to the hilt. In many areas, they have occupied tribal's lands using high-handed tactics. They have also got necessary papers prepared in support of their occupation. Some of them have managed to get pattas from Government, some have got thumb impressions of the tribals on paper and some have even got some deeds - false or genuine - registered in their favour. In this way extensive lands belonging to the tribal people has gone out of their hands on one pretext or the other. Today paper is against them. Therefore, they are helpless, they cannot do anything.

5.10 In many tribal areas, papers were prepared a long time back. In many cases only notional maps were prepared at that time. These were rough maps which showed people's lands approximately. There is one more thing. All these papers are very old. The entries in document and the actual position in the field do not tally. In this way, the situation even in those areas where some papers were prepared earlier is not particularly good. The outsiders, Public Sector enterprises and even the Government has taken advantage of the weaknesses of the people concerning documentary position. They have occupied lands of innumerable tribals by manipulating paper records in their favour. The average tribal in these areas is in great trouble.

#### The sad story of Sonbhadra

5.11 The problem of land is universal through out the tribal areas but the situation is worse in Sonbhadra district of Uttar Pradesh. The people have launched agitations a number of times after independence when their troubles crossed the limits. The Government also initiates corrective measures each time yet with no results. Even at the moment there is great dissatisfaction in these areas and the agitation has been launched. Therefore, I will specially discuss the situation of this area.

#### The State defaults and people suffer

5.12 This area was a tribal area before independence and a number of communities were listed as indigenous tribes. A variety of administrative system existed in this region there were some zamindari, some areas were directly under the supervision of the Government. The people in this area after independence were declared as Scheduled Castes instead of Scheduled Tribes without any valid ground, perhaps on account of lack of understanding. The same community across the border in Madhya Pradesh and Bihar were declared as Scheduled Tribes. The first adverse effect of this misclassification was that these people were left out of the ambit of the protection of the Constitution.

5.13 The position about land records in this area is very bad. No land records were prepared in many areas. And wherever some papers were prepared, the maps were notional. So long as this area was secluded and there was no much interaction with the outside world, the people did not face problems. But it is a matter of chance in a large State like Uttar Pradesh, this small area is endowed with rich natural resources, waters forests and mineral resources. Therefore, when the new phase of development started,

a variety of projects were taken up in this area. Amongst them, Rihand Dam and Super-thermal Power Projects are particularly notable. I have referred to these projects in my previous Report. We will discuss about the problem of displacement in a later section.

#### A phase of open loot

5.14 The most important thing in this new phase was that land was required for variety of purposes. The record of rights of people on land in this area were either non-existent or incomplete. A number of people lost their lands simply because either there were no papers or their names were not recorded therein. On the other hand, a torrent of people started from outside after new projects started getting established. When these people saw the situation around, they thought of making hay while the Sun shines. These people grabbed tribal lands by using a variety of tricks. There is no count of big farms and also big projects which have been established in this area after independence. Nobody has bothered as to what happened to the real owners and the tillers of the land. The Government and the administration are blissfully engrossed in developmental works.

#### Depredations of settlement

5.15 Eversince independence the people of this area have been placing before the district administration and State Government their problems relating to the land and forests. The State Government is also fully aware about the real bad situation in this area. Therefore, the State Government started land settlement operations in 1962. But there was such a big muddle that it had to be stopped. The settlement was taken up afresh once again in 1974. But it also did not succeed. Instead, there was a still greater muddle. The basic reason for the failure on both these occasions was that the entire process was beyond the understanding of the tribal people. The decision on each occasion was dependent on not the actual situation in the field but what was recorded on paper and all sorts of evidence. Secondly, the entire process was conducted in the courts outside the village. The tribal himself could not understand the proceedings in the court and engaging a good counsel was not within his means. In this situation the outsiders were able to get whatever they wanted through arbitrary manipulation of papers. The people continued to raise the question of these malpractices before the government, but it had not affected. IN the end, the people in sheer desperation knocked the doors of the courts. The Supreme Court heard this case and gave detailed instructions to the State Governments for proper conduct of land settlement.

### Even ideal system recoils

5.16 An ideal structure was set up for settlement under the directions of Supreme Court. Accordingly a number of officers were appointed under a senior officer for undertaking this task. A time limit of two years was fixed for completing this work. Keeping in view the simplicity of the tribal people, provision was made for free legal aid. And to ensure that no injustice was done even in a single case, a provision was made for automatic review of every case by a higher court. Five senior officers of the level of the District Judge were appointed. To ensure that the entire system was functioning well the Supreme Court appointed three Commissioners. They reported directly to the Supreme Court.

5.17 Thus, the Supreme Court created an ideal structure. It is not possible to go in detail about the functioning of the system, nor it is necessary. Suffice it to say that every person of this area, who was tilling his land without any problems so far, got entangled in at least half a dozen cases. The amins at the time of the local enquiry recorded names correctly in pencil. But when they prepared regular papers, pucca entries were made arbitrarily. The result was that a person having good land got in his name fallow land and best lands in the names of persons having rocky stretches. Persons who may not have even seen a village, got any amount of agricultural land or even the best forests entered in their names. The forest areas were shown as agricultural land and agricultural lands as forests.

5.18 The most regrettable fact is that the muddle and manipulations of the previous two settlements, against which people had protested and on account of which the fresh settlement was ordered, remained as they were. Firstly, no law has been passed which could be used to extinguish the rights acquired earlier by taking undue advantage of the law. Secondly, no instructions were issued for correcting these mistakes of law during field enquiry. The result was that the muddle and manipulations of two earlier settlements remained as they were, but innumerable new apocrypha have been introduced during the new proceedings.

5.19 This is not all. The free legal aid has been organised in such a routine fashion that the people have not got any benefit. They still have waste time and money in each and every case. Even the provision for automatic review by higher courts has gone against the people. Firstly, when every case goes to a higher court, the concerned person is obliged

to attend the courts on every hearing. Secondly, in the proceedings of the higher courts there is greater concern for legal niceties than ground reality. In this situation the scales are heavily loaded in favour of one who has money and who can afford a pleader.

5.20 In sum, every person in this area has been caught in the whirl. He does not know whether his land stands in his name or not. He also does not know how much he will be required to spend to see that his name gets entered against the land which he is cultivating. Therefore, innumerable persons are being forced to seek refuge with moneylenders. What can he do? At every step, every movement, money is required. Some voluntary organisations are helping them but even they are helpless in that tornado. If the things continue as they are, his lands will either be grabbed by stronger people and if he is somehow able to save his lands, so much expenditure would have been incurred that they will be lost to the moneylenders.

#### The basic issue

5.21 The people of Sonbhadra and some voluntary agencies, in the beginning tried to present their problems before the Government. But it did not yield any result. The Wheel of Settlement continues to move as usual without any change. Therefore, finding no alternative they had to think of a solution of their own. They have now come to the conclusion that the settlement is a matter of life and death for them. Secondly, it is also clear that they cannot get justice through the legal processes as they are. When the people themselves thought in depth about all their problems, they came to realise that the biggest strength of the people, particularly the tribal people, is in the village. A person has full knowledge of everything there and the people can face all problems by joining hands and coming together. But outside the village, they are strangers, that is their biggest weakness. Therefore, an ordinary man is helpless; he has to seek help from others. The conclusion was that so long as the people have to go out of their villages for getting their right, there will be no end to their problems. Therefore, there was only one way to come out of this morass—they should tell the Government that the entire proceedings concerning their lands should be completed within their respective villages and that they will not go out of their villages for this purpose.

5.22 Ordinarily, it is expected that in all matters concerning land, the entire proceedings will be conducted within the village and even the final decisions will be taken there. But this principle is not being generally followed. Therefore, the question of following it in inaccessible regions simply does not arise. Senior officers avoid visiting such areas. Instead they think of calling the people themselves. After all it is their work. The entire proceedings, therefore, are conducted on one pretext or the other in bigger places outside the village. In this way thousands of people are forced to run about for months and years simply for the convenience of officers. They do not even realise, let alone feel concerned about how helpless is the common man when he is outside his village. Other people take full advantage of his weak position there. They get tribal lands recorded in their own name openly using some device or the other. He has no choice but to look on that open loot with stony eyes.

#### Malfunctioning of the system

5.23 A major weakness of the system itself has come in the open in the course of this settlement, for which the simple people are required to pay a heavy price. It is well known that Government officials, even in the ordinary course are not prepared to work in inaccessible tribal areas and many of those who manage to reach there are not desirable persons, they take advantage of the simplicity of the people and indulge in arbitrary actions. The best opportunity for arbitrary action is provided by settlement in which a wrong entry can deprive a simple person of all his possessions and, by the same token, the clever can acquire big estates. Therefore, the plight of the simple people, in case wrong persons are inducted for a settlement, cannot even be imagined.

5.24 The biggest reason for the muddle during earlier settlements in Sonbhadra was the malfunctioning of the administrative system. It is a matter of deep regret that no lesson was learnt from those catastrophies and the people were again thrown to the wolves for the third time. Looking to the possibility of malpractices during settlement operation, ordinarily caution is exercised to ensure that only good officials are inducted. In particular, officials who are likely to retire are not posted so that there is some fear against the wrong action. Not only the government did not exercise this ordinary caution, but appointments were made in direct contravention of the same. Firstly, not many officials were ready to go to this remote area notwithstanding the efforts of the State Government and directions of the Supreme Court. But government did not take firm action in this matter. Therefore, for a long time, a large number of posts

remained vacant. In the end, the Government had to appoint retired officers and many posts were filled by them. In this situation, what was feared happened -- there was open loot. The services of all retired officers have been terminated after the formation of the new Government in the State (December '89) but no one knows when and how new appointments will be made. The work of settlement at this time (March '90) is at a stand still.

#### Reaction of the people and their resolve

5.25 In this way, while the process of settlement is somehow continuing in the Sonbhadra, but the people have placed a demand before the Government for giving a new turn to these proceedings. Their demand is that all proceedings with regard to their lands should be completed within their respective villages, which is fully justified. While placing this demand, the people have realised that the proposed process may take a long time for completion. Therefore, they have also decided that uptill such time as the Government may be able to make suitable preparation for this, the people will continue to manage their own affairs concerning forests and land within their respective villages. The size of a village or settlement village in this area is very large. A village may have 10-20 or even 50 hamlets. In the contest, the social unit is the hamlet, not the village. Therefore, for the purpose of proposed self-management they have decided to treat hamlet as the unit. The people of each hamlet will manage the entire land and forests within its geographical limits. So long as the proposed process is not completed by the Government, the management of land and forest by people will be conducted on the basis of the following three principles:-

- (i) the person who is cultivating the land shall continue to be in possession of the same;
- (ii) any person who is not cultivating land in the village will not be allowed to occupy any land in the village on the basis of any Government or non-government document of any description whatsoever; and
- (iii) no person will be allowed to clear the forest on the strength of any formal order from outside.

5.26 The people of Sonbhadra have also decided that so long as the settlement record is not finalised by the Government, they will make their own record for each hamlet. They will prepare a notional map for each hamlet

which will show approximately the land of every person. They will also prepare a record which will give all the four boundaries of each field so that there is no doubt about the extent of an individual holdings. They assert that if the government has been able to manage their affairs without maps or on the basis of notional maps for hundreds of years, the village people can manage with the same atleast for sometime. After all, here everything is within the knowledge of the people of the village. Therefore, there is possibility of mistakes creeping in government record, but the records prepared by the village people shall always be correct.

The basic question of land settlement - People's Right to Manage their Own Affairs

5.27 The people's movement in Sonbhadra on the issue of land is in the right direction. It is necessary to accept the spirit of this movement. The present system concerning the right over land is basically against the tribal people. The facts with regard to the land being cultivated and the ownership are known only to the village and the correct decisions about these matters can be taken only in the village. The dependable evidence on these issues is also available only in the village. Only the people belonging to the village can tell the facts. Paper records and other evidences are not only meaningless but are liable to all types of manipulations. The basis of right over land in the present system is the Government record. If there is any dispute in this matter, the final decision is given in a court outside the village. The most dependable evidence in the court is record and the oral evidence of the people comes only next. It is the strong and moneyed people who can produce evidence in the court. Moreover, the same very people can agitate legal issues right from the lowest to the highest courts in the country. It is clear that outside the village, the scales are heavily loaded against the common man and there is no hope for him to get justice. Therefore, unless there is basic change in the system to the effect that all decisions about right on land will be taken amongst the people in the village, the tribal people will be able to get justice.

5.28 Eventhough this demand has arisen from the settlement operation, yet the principle holds good in all matters concerning land. The demand of the people of Sonbhadra is basic. Their resolution to manage their own affairs, if the government is not able to make suitable arrangements, is not only in keeping with the democratic values but it is also in keeping with the principles of self-management for the tribal people enshrined in the Constitution. The government should honour the resolution of the

people and accordingly make necessary changes in the process of settlement. The same principles, and a similar system, in respect of settlement and all other matters concerning forests and land, should be adopted throughout the country. For protecting the rights of the tribal people on lands, it is necessary that their management should be within the village. The village community is the best forum for this purpose. It is the community which should have the right to oversee the system. They can even resolve on their own in this regard which should be honoured by the Government.

## RIGHT OVER MEANS OF PRODUCTION - 2

### Land, Tillage and Entitlement

The issue of land alienation in tribal areas had been discussed at length in the last report. It is, therefore, not necessary to repeat the same here. Stringent legal measures are necessary for protecting the tribal lands and restoration of lands, already lost, as there does not appear to be much hope for any significant stepping of measures in this regard, particularly by the Government in the immediate future.

6.2 The most regrettable trends in this regard are evident in Andhra Pradesh which I would like to refer again with some new facts. As is well known, the Government in the State has been negating its own law concerning protection of tribal land. It appears that the State Government is determined to annul the law itself for which all attempts are being made. The limit was reached when the Tribes Advisory Council of the State itself, which has the responsibility for advancing the tribal interests under the Constitution, recommended the annulment of the law. No political party has supported the tribal people in this regard. Their main concern was somehow not to annoy the people in majority. The behaviour of Tribes Advisory Council has however crossed the limits. Two points are clear from their actions. Firstly, the tribal representatives are unable to understand the traps of the formal system. Secondly, other people can easily bring pressure on them through deceit.

6.3 There is concerted opposition throughout the tribal areas against the attempt for annul of this law. Some local institutions like Rai Sabhas and voluntary organisations have played a commendable role in this. The Government has been obliged not to proceed with its proposal for annulling the law even after they were able to take the concurrence of the Tribes Advisory Council. I hope that the State Government will not proceed further with their wrong decisions with regard to this law concerning land alienation and will implement it in keeping with the spirit of the Constitutional

provision. It is a matter of regret that even while the State was taking these measures, the Union Government did not issue a direction asking them not to violate the Constitution.

6.4 The most basic question about land is the right of the tiller on the land. Even after the right of the tiller on the land has been accepted by the law, in reality his position has remained the weakest. It is almost impossible even to get the name of the tiller of the land entered in the Government records, let alone the question of conferment of rights over it. In this situation the basic question is how a tie is to be established between ordinary workers and the means of production. It is necessary to discuss this issue in some detail.

6.5 The problem of those farmers who were cultivating their own lands and took help of labourers only according to the need, was solved after the abolition of Zamindari. The problem of such labourers is not of ownership but of wages, which we have discussed earlier. The real question here is about those people who do not even touch the plough themselves but are owners of land. These people themselves fall in two categories - firstly, those persons who are engaged in other occupations but somehow want to retain their control over the land; secondly, there are those people who have no other occupation but either have so much land that they need not cultivate it themselves or their social tradition prohibits them for self-cultivation.

6.6 None of these two groups deserves any sympathy, but those people who are engaged in other occupations, are in a special situation. The number of such people is quite large and is increasing day by day. The extent of absentee landlordism is unprecedented and its incidence is now much higher than even during the British days. These people are taking advantage of the new system in the name of justice and old system in the name of their rights through continued occupations of the land. They are not allowing other persons even to enjoy the right of earning a decent living. These people have no right to continue their hold on the land. If they want to have land, they should cultivate it and leave other occupations which can be taken over by some other persons. I had recommended enactment of a suitable law in my previous Report for achieving this goal. It is a matter of regret that this issue has not even been discussed so far.

6.7 Now the question is that so long as a law is not enacted for termination of entitlement of absentee ownership, what course of action could be adopted by the people. The absentee owners broadly adopt one of the three following

methods for their cultivation:-

- (i) Some people engage labourers for the whole year. These people also assign to each labourer a small piece of land for personal cultivation, so that they remain tied to their estate. Moreover, these labourers, either get a share in the produce of other fields or they get wages for the days on which they work. The rates of wage are settled in advance. Such annual labourers, therefore, come in the category of bonded labourers. The big Zamindars usually follow this practice.
- (ii) Many people do their cultivation through share-croppers. There are a number of variations even in the practice of share-cropping. A share-cropper usually gets half the produce, but it may be more, as in the case of West Bengal, and may be less elsewhere. The share depends on the quality of land-can be less in better lands and more in poorer lands.
- (iii) Many people give their lands on contract. These contracts may also be of different types. Usually the rate of contract is fixed in advance. Good irrigated lands can fetch a rent of Rs.2000 to Rs.3000 per hectare. In all these cases the land is given only for a year. However, the same person may continue to cultivate land year after year, if not through generations, but these cultivators do not have any right on the land either in law or in reality.

6.8 In considering the question of those people who cultivate land owned by other people, it will be necessary to focus on the basic principles of our national economy rather than mere legal provisions. The principle that land belongs to the tiller is natural and also basic. This is also the spirit of our Constitution which was sought to be made a reality through a series of measures taken in quick succession soon after independence. Now, if at present these persons, who are cultivating the land, do not have any right over the same, there is something amiss somewhere. Either there is a flaw in our law or there are some serious omissions in its implementation.

6.9 In this regard, I must refer at this stage one point which is extremely regrettable. There is a move now in many quarters to accept the present unjust situation and to justify the open violation of the right to land on the pretext that the principle of land to the tiller cannot be implemented. This plea is being made openly even in serious discussions organised by

responsible institutions. This is indicative of the growing insensitivity about the issue of social justice and, what is more, lack of faith in the Constitutional values in our country, but what can be expected from the elite whose interests are directly linked to that unjust system, rather than that they should cover their own interest by specious principles and ignore real principles by branding them as impractical idealism. In this situation, there is only one ray of hope that some people even in this system are still supporters of right principles and, what is more, the people themselves are becoming increasingly aware about their own rights.

#### 'Sole' village of Palamu district in Bihar

6.10 It will be appropriate to refer to some recent events in the village 'Sole' of Palamu District in Bihar. This village can be taken as a symbol of our feudal heritage. The Zamindar of this village is one of the very big landowners of Bihar. It is said that in all he has about 4000 to 5000 acres of land. Most of the land in this village also belongs to him which is around 800 acres in all. The next person in this village after the Zamindar is a Brahmin who owns about 20 acres of land. Next to him are other people owning 5 acres or less. Most of the people do not have any land. They depend on the land of the Zamindar for their living. Most of the residents of this village are Muslims and Harijans.

6.11 I visited this village sometime last year during my tour to Bihar. The people told me that 28 families are ploughmen of the Zamindar. Each of these families has been assigned half an acre of land, in lieu of which they have to work with him. There is no guarantee for work on every day. However, they must report for work on the day when they are so required by the Zamindar. They get the wage in kind for the day of work which is equivalent to about Rs.3. They cannot go to work elsewhere even on those days when they may not be offered work by the Zamindar. They have to go without work on that day. There are about 50 share-croppers besides these 28 ploughmen. These share-croppers have been cultivating the same land for the last 10 to 20 years. The only pucca house in this village is that of the Zamindar; all other houses are uniformly ordinary kuchha ones. The manager of the Zamindar lives in the village who looks after his land and the house.

### Consciousness amongst tillers about their rights

6.12 Till now the people of 'Sole' village have accepted the feudal tradition as their fate, but now there is wind of change. They are not prepared to accept this injustice. I was told that they have recently decided that they will fight for their rights on the land. The person who is actually tilling a piece of land will not leave it. This decision was communicated by them to the manager of the Zamindar sometime last year. This change was not relished by the Zamindar. This could be the first step towards the end of his ownership of the entire land. Therefore, first he tried to browbeat the village people. He sent a communication to his tenants through the manager that the outsiders were unnecessarily provoking them. They should not believe them. If those people did anything on the suggestion of the outsiders, they will not get the land in the village for cultivation.

6.13 When the people did not pay any heed to the Zamindar and remained firm on their decision, the Zamindar sent them another message that no land will be given to any person of that village. And he will himself get the land cultivated this year. The Zamindar tried to get the labourers from outside the village for his cultivation. But in the intervening period, the village people had talked and got in touch with the people in the neighbouring villages and told them about the struggle which they had launched about their entitlements. They were also clearly told that their demand is a very simple one that they will not leave the land which they are cultivating. They have no objection to give a share to the landlords, as usual. The only right which they want to be conceded is that the person who may be cultivating the land will not be required to leave it.

6.14 The people from the neighbouring villages understood the issue and concurred with them. Those people also decided that no one will go to village 'Sole' for labour. Thus, while the landlord could not get labourers, the share croppers started making preparations for cultivating the land. This was a matter of prestige for the Zamindar. He again conveyed a message to the share croppers that if they tried to plough the fields they will be forceably stopped and will not be allowed to do so. Thus, the issue heated up and reached a stage of confrontation. The people then discussed the matter and came to the conclusion that they were not yet ready for such a confrontation. Therefore, they decided that they will not fight with the landlord; but they will also not relent. They will not allow outside labourers to plough the fields.

6.15 Thus a war of nerves is on in the village. No one from the either

'side is prepared to retreat. The result is that, except for a small piece, the entire land is lying fallow.

6.16 Both sides are preparing for the next year. Initially, the Zamindar had succeeded in enticing one or two persons to his side by offering land to them and was also able to get a small piece cultivated, but these people then realised their mistake and they rejoined the villagers; and not much land was cultivated. The Zamindar has a lot of land elsewhere as well. Therefore, it does not make any difference to him if the land in this village remains fallow. But the main question in his case is that of principle and prestige. The question before the cultivators, on the other hand, concerns their very survival. The cultivators have made an application to the administration that it should provide them protection so that they may be able to cultivate the land this year which they have been cultivating for long and may also continue to cultivate it in future. They have decided they will not allow this right of theirs to be ignored this year and even if the administration does not side with them, they will protect their Constitutional rights themselves.

#### Irregularities galore

6.17 While speaking about the rights of the people, the first question is as to how even till today a few people have been able to retain such large estates? The detailed enquiry of the situation in 'Sole' village has brought out some facts which deserve to be mentioned. Some lands have been shown by the Zamindar as self-cultivated. Similarly, some lands have been kept under his control by getting the names of his family members entered. Unfortunately, the term self-cultivation does not necessarily involve cultivation of land personally using one's own labour or family labour, a common sense interpretation. Even if a person does his agriculture through hired labour, it is deemed to be self-cultivation. In this way any extent of land can be kept by a person either on the pretext of self-cultivation or in the name of members of the family.

#### Trusts - Real and Fake

6.18 The Zamindar has shown some land in the name of a Trust, but it is continuing to be in his possession. This Trust is in the name of a temple located in another village. The Trust-land is looked after by the manager of the Zamindar. It is doubtful whether any share of the income from this land even reaches that temple.

6.19 Such fake Trusts are not only in 'Sole' or even in Bihar, but they are in all States. In some cases there is a proliferation of Trusts. I had recommended in my last Report that all Trust lands should be distributed amongst the landless and the Government should give a grant for the purpose for which a Trust may have been established according to its need. What could be the justification for supporting the religious or social work on the basis of exploitation and depriving the poor of their rights? Why should a good cause be dependent on exploitation? When the Government can feed ex-Rulers, it can as well give grants according to the need for those social and religious purposes which today are dependent on exploitation and thus free the poor from exploitation. This is the duty of the State. In case a Trust is fake, the question of any grant simply does not arise.

#### Misuse of ceiling laws

6.20 Some lands belonging to the Zamindars were not taken over under the ceiling because they were recorded as garden. There is no garden in reality and the entire land is under cultivation. The Zamindar has thus retained his control over the land by misusing the ceiling law.

#### Right over Ghair-mazarua - The Root of Lawlessness

6.21 Similarly the Zamindar has got a lot of ghair-mazarua land recorded in his name ignoring the rights of landless persons in the distribution of the same. It is regretted that special attention has not been paid to the distribution of ghair-mazarua lands in Bihar. In many States like Madhya Pradesh there is a clear procedure for distribution of government land which is fit for cultivation. In accordance with the procedure, firstly a list is prepared of all those lands in the village which are fit for agriculture and can be distributed. It is followed by a public notice to the effect that the land is proposed to be distributed. The land is finally distributed on the basis of priorities fixed in the rules amongst eligible persons who are shortlisted from the applicants.

6.22 In Bihar, the initiative for allotment of ghair-mazarua land comes from the person who wants it rather than from the government. The person who is desirous of getting the land makes an application. In this procedure, firstly at any level it cannot be known with certainty as to which land falls in the category of ghair-mazarua land whether it can be distributed. In this situation, firstly the poor do not get even the information about land and advantage is taken by cleverer people. Secondly, in many cases, the stronger people take possession of such lands well in advance. When

an application is received, the officials make a rough and ready enquiry and the applicant gets his patta. In some of the areas where social workers have asserted claims on behalf of the poor on the basis of information gathered by them, there has been some improvement, but side-by-side confrontation has also increased. But the Government is not taking any measures to find a way of giving justice in cases where the people have already grabbed land taking advantage of the ignorance of the people. Therefore the people are asserting from their side. This is also happening in 'Sole' village.

#### Grabbing of land through deceit - False Surrenders

6.23 In the end, I may refer to those cases where the Zamindar has grabbed the land forcibly or through deceit. Grabbing land through sale or mortgage deeds after payment of nominal amounts in cash or credit is much too well known, but yet another device is being used in many areas for land grabbing which it is necessary to describe. According to the law if a person is not able to cultivate his land or does not want to cultivate his land he can formally surrender it. This provision was particularly necessary at a time when land revenue was quite high compared to the income from land and the poor desired relief from this levy. The Government used to assign the land to another person after the surrender was formally accepted.

6.24 This old legal process has been greatly misused in Bihar and particularly so in the tribal areas of Palamu. Here a number of people have got surrenders from the side of the cultivators in collusion with the petty officials and also got their names struck off after getting the surrenders accepted. Thereafter the land has been recorded in some other names in a slimy fashion. This entire process is on paper and the real cultivator is not even aware about the same. Therefore, while the cultivator may continue to till his land, yet the name of some other person appears on paper replacing his own. The strong people then wait and as soon as they get the right opportunity, which may be after just a while or even after many years, evict the person and occupy his land.

6.25 The poor does not get any relief from any quarter in cases of such deceitful and forcible alienation. After the strong people acquire possession, everything is in order and no one can touch them. The paper entries have already been manipulated. Sometimes the surrender may have been got submitted in the name of their dead ancestors so that even the possibility of getting their thumb impressions verified in an enquiry is removed. It

is not only in 'Sole' of Palamu District but in many tribal areas like Ranka and Bhandaria blocks that strong people have grabbed the land of the poor on a large scale on the basis of such surrenders. The people have launched a movement against this. They have no hope of getting this land back through courts. Therefore, they are taking back the possession on their own through joint action.

#### People's decisions against injustice

6.26 The people of 'Sole' village have taken some decisions on their own to face the difficult situation in which they are finding themselves today. The first point which they have decided is that the person cultivating a particular piece of land will not leave it and he will cultivate it during the coming season whatever may be the consequences. If the Zamindar so wants they will give him the due share of the produce in respect of his land. The Zamindar has no right over the lands appearing in the name of the Trust. Therefore they will keep a share of that produce aside and will dispose it of in any way suggested by the Government. The lands which have been grabbed by the Zamindars by manipulating fake surrenders will be returned to their real owners. But this may take sometime because the people want to decide all issues of the village land together. Therefore, if some poor person was cultivating the land which really belonged to some other person, he will continue to cultivate it this year. A final decision in this regard will be taken at a future date. In any case, the Zamindar will have no right. Similarly, the people, who cultivate those lands last year which had been taken away by the Zamindar using wrong methods such as the ghair-mazarua or garden lands, will continue to be cultivated by the same people. A share from the produce from such lands will be kept aside in the form of a village fund for the time being. The people will decide about its future use.

#### The struggle of the poor in 'Pulimamidi' of Andhra Pradesh

6.27 About two hours drive from Hyderabad, the capital of Andhra Pradesh, is the village 'Pulimamidi' in Kandukur Mandal. The feudal strangle hold in this village after independence has become extremely strong through open misuse of law. The ordinary cultivators, most of them belonging to Scheduled Castes are the sufferers. But they are no longer helpless. They are fighting for their rights. It is said that the story of this village is not exceptional. The situation of this village is just illustrative of the situation in the Telangana region of Andhra Pradesh. I will, therefore, discuss the situation of this village in some detail.

6.28 The story begins with the reign of Nizam. There was a Jagirdar in this village. Every family in this village was required to provide one labourer to the Jagirdar either free or on payment of nominal wage in kind. They had to face a variety of atrocities on being indebted and in the end they could save themselves only by surrendering their lands. The family of the manager of Nizam has taken undue advantage of his position after independence and created a big jagir for itself.

6.29 The entire process of bringing the land under control was done with caution and understanding. After 1950, he first got his name entered along-with that of Jagirdar in the Khasra/Khata on one khata after another. Thereafter he got his own possession entered one by one. Besides he got the possession of some other people entered in the records on the ground that they had purchased the land in 1948. It is said that the manager has occupied some 5000 acres of land which is in his own name or in the name of some others.

6.30 It was clear that it was difficult to maintain such a large estate in the new milieu. therefore this person adopted a number of other tricks for continued possession of this land. Firstly, a number of banami transactions have been made to avoid the ceiling laws. For example, in 1965 a Trust was created in the name of a temple and about 240 acres of good black soil land was recorded in its name. In 1975-76 about 1000 acres of land was got recorded in benami names on the basis of old sale deeds and possession, about which there was no proof. This was even got entered in government land was got recorded in 1961-62 in the name of new lease holders without following any process. It is said that after 1971 about 2000 acres of land has been recorded in the name of Benamidars.

6.31 The Zamindar is trying his utmost, that the residents of the village should not acquire any title over these benami lands. According to him, 'the services of the village and decoration of a corpse are both equally useless'. It is said that he has sold a lot of land to outsiders and the sale is still continuing. But if the village people want to purchase the same land, it is refused. Fortunately, the names of the purchasers have yet to be entered in the records as pattydars because of legal obstacles. The main reason is that the sellor does not exist, because of which sales cannot be verified. there are a number of disputes in the village on the question of actual possession of land.

6.32 It was in response to an appeal about these disputes, I myself went there in 1988 and saw the things for myself. It was a strange sight. On the one hand, thousands of acres of land was lying fallow and, on the other hand, hundreds of poor had nothing to live on. Whatever may be the reason, this situation cannot be accepted as appropriate. The people cannot be kept away from using natural resources for making their living. Therefore, I advised the local administration that the lands in the name of Trust or under benami titles should be appropriately distributed amongst the poor, but this advice had no significant effect.

6.33 The people then sought help of the Court, the administration, as also their own organisation to get the right to cultivate this land. 240 acres of this land is in the name of Devasthan. But the Devasthan Pratishtan which is responsible for looking after it under the law, came to know about this fact for the first time in 1987. The Pratishtan thereafter set up a committee for managing this land. In this way, the possession of the Zamindar on this land was removed but the Devasthan Pratishtan did not want this land to be given to poor cultivators. Grass is grown on this land. In view of my suggestions, there was a proposal that the land may be purchased by the Scheduled Castes Finance Corporation and distributed to the members of the Scheduled Castes. But no decision has been taken about this so far. Secondly, the people of this village are also not keen about this proposal. According to them, the poor of the village will get divided. Therefore they want a decision about the entire village land so that all the poor in the village may get relief.

6.34 After my first visit to this village, some members of the Scheduled Castes instituted a case in the Court about the benami lands and requested the Government that they may be allowed to cultivate that land during the interim period. The Joint Collector in his judgement held that the land was benami. An appeal against this decision is however, pending in the High Court. But in the absence of any direction about cultivating this benami land, from the side of the Government, the people have occupied it on their own and have started cultivating the same.

6.35 The cultivators are now worried that the Zamindar may try to take possession of land by force. Therefore, they requested the local revenue officers that they may record their name on the land as occupants in the Pahani and also the fact that the land was cultivated. They have also requested for a copy of the report so that they may have a written proof of the fact that the land has been cultivated by them this year (1989-90)

and the same is in their actual possession. But they could not get the information about entries in the Pahani, let alone getting a copy of the Pahani, even after submitting a number of applications. The village people sent an application to me about this on the basis of which I again went to see the situation for myself in this village (April 1990).

6.36 After seeing the actual situation and also the village papers, the fear of the people was confirmed. Even though the local officials had enquired into their applications, but neither the report had been sent nor were they intimated in writing about the findings of the enquiry. On perusal of the papers, it was found that the land recorded as padat (fallow) for the year 1989-90, and the land was under a benami title against which the case was pending. Since the land has been shown as fallow in the pahani, the question of entering the names of persons occupying the same does not arise. The local officials during the course of my enquiry told me that the land had been cultivated this year. I also visited the fields. It was clear that the land was cultivated since the stems of the previous crop were standing in the entire area. In this way the entry in the pahani was found to be wrong. The entry in the pahani was not corrected even after it was found to be wrong in the course of official enquiry.

6.37 The reason for this non-correction in pahani is clear. If it is shown in the pahani that the land was cultivated this year, the other natural question could have been as to who cultivated it. These fields are under benami titles. The so-called title holders of those lands have not been seen in the village uptill now and no one knows anything about them. The Joint Collector had also pronounced that they are benami. Therefore, if the land was shown to have been cultivated, it would have been obligatory for the officials to enter the names of applicants as occupants. With this entry their possession and their right would have got firmed up.

6.38 It appears that in this case the Zamindar and officials were waiting for the advent of rain. After the rain, the proof about a field having been cultivated or not would have disappeared. At that time, the Zamindar could have easily got the land ploughed through hired labour and would have easily occupied the same. If attempts were made by those who cultivated it this year to retain their possession, police help could have been sought by the landlord by describing their continued possession as forcible occupation. Since the land had been shown as fallow in the pahani it would have been an important piece of written evidence against their claim of actual possession of the land this year; and any oral evidence could have

been easily disbelieved. Therefore, the police could have prevented them from entering the field. In that situation, these people could not have got relief from any side. It is possible that at that time the enquiry report on their applications would also have been submitted to higher officers with a finding that the land was fallow and nobody was in actual possession.

6.39 It is a chance that I reached this village and the facts that the land was cultivated this year and that the poor people were in actual possession came out. My visit created such a documentary and oral evidence which cannot be easily brushed aside. But even now if there is an attempt to forcibly evict the poor from any side, I hope that the police will provide them protection on the basis of undisputed facts about their possession; this is their clear duty.

#### Some basic questions about land

6.40 The issues in the struggles of 'Sole' in Bihar and 'Pulimamidi' in Andhra Pradesh appear to be very simple but they raise some vital basic questions. Firstly, should this reality, that a person is actually cultivating a field, be put on record in Government paper or not? The reality on the ground has got to be reflected somewhere or the other. If this is not allowed in our system there is only one conclusion that the system has allowed an easy device for ignoring the valid rights of the poor. This process may be legal, but it can neither be said to be just nor it is in consonance with the spirit of our Constitution. The dissonance between law, justice and Constitution is clear in this situation. Come what may, it is necessary that in no case should the Constitution and justice be allowed to be violated. If a person is subsisting on land by cultivating the same, then if the system and the law cannot get him the ownership right they can atleast protect his right to eke out a living from the same. If the system and the law cannot protect this basic right of an individual, his right for self-defence cannot be taken away. The struggle of the people of the villages 'Sole' and 'Pulimamidi' is a struggle for protecting their basic right of life. I trust that the local administration and the Government will take necessary action for protecting this right of theirs.

6.41 The question which has been raised by the cultivators in these villages does not relate only to one village. It is a question for the entire country. In reality the very right to life of all those who earn their living through cultivating the land throughout the country is directly

linked with this question. Today the number of such cultivators who have no right over land is maximum and most of them are members of the Scheduled Castes and some of them are also members of the Scheduled Tribes. And it is the struggle of life of these people which is most difficult and the right to life of their's, the most crucial.

6.42 In this situation, in accordance with the spirit of the Constitution and the promises made so far, it is the duty of the State that immediate and effective measures are taken to make the principle of land to the tiller a reality. There can be no reason for delay in this even by a single day. The first step for protecting the right of life of people belonging to this category will be that whatever may be the law, or even if there is no reference to this in the law, it should be ensured that a person, who is presently cultivating the land, continues to do so without interruption. This principle should be openly pronounced and the actual possession of the people should be entered in Government records. Moreover, if any landlord dispossesses the cultivator ignoring this basic right, it is the government's responsibility to provide protection to him. The people have a right to resolve to protect their right of life and to struggle for the same. The minimum which can be expected from a Government which has been specially entrusted with the responsibility of providing protection to the interests of the weaker sections of the community by the Constitution that wherever there are struggles of this type, it will not take side of the owner but protect the right of the poor.

6.43 The other question is about violation of laws concerning land. There are ceiling laws in all the States. Then how is it that Zamindars still have thousands of acres of land which they at some places get cultivated through bonded labourers and at others keep fallow while the poor are without any economic base and roam about in search of a living?

6.44 It is known to everyone that the occupation of these lands by the Zamindar is illegal. It is also clear that these people are taking undue advantage of the complexities of our legal system in which if somehow a case gets entangled, it can remain undecided for years. In the meantime, the landlord continues to occupy the land and the poor is rendered resourceless. It is well known that in any matter concerning land, the person who has its occupation is the winner in the end. The occupant can institute and follow his case in one court after another using the income which he gets from that land; the poor has no resources for fighting it out in the court.

6.45 Therefore another basic question is that as to who should rightfully occupy the land in case of dispute about the land. The person who earns his living through cultivating the field is non-existent so far as the question of possession of that land is concerned. The possession of the land is taken to be that of the owner even if he may have never seen that field. The basis of this perception in our system is the recognition of the property in the form of land. Natural resources, including land, are the basis of living for the people, and not property. Therefore there is need for basic change in the present law. Simultaneously, it will have to be ensured that the agricultural labourers or the share-croppers get justice in the intervening period until such a law is made. Since their life is sustained through cultivation of the land, they have a right to cultivate the same. Similarly, if a landlord just occupies the land without using it he is preventing some other person from exercising his right to life. In such a situation, these people are entitled to establish their right to life.

6.46 One more thing is notable in this case. The land laws in many States earlier had a provision, which exists in some States even now, that if the owner of the land does not cultivate it, the administration can take it over and get it cultivated. Similarly, if a person deserts a land, it can be given to some other person for cultivation. There is yet another aspect. According to the present law, land is given for agriculture. Therefore, it cannot be used for any other purpose without permission of the Government. This also means that land is not a personal property of any one which can be used in any way he likes.

6.47 It is unfortunate that this aspect of our land laws has not claimed any attention after independence. A number of programmes have been launched for development of agriculture but there has been no check on the fact whether the owner of the land is putting it to the right use or not. Therefore, the property form of land has become increasingly prominent. The price of land around the cities and of that used for industrial establishments has risen phenomenally. Therefore, many Zamindars want to maintain their possession over the land at any cost. They are not bothered about its proper use. They are also looking out for such opportunities that they may get a handsome price and sell the land. This is wrong. The people, who depend on agriculture for their living, have the first right over agricultural land. If someone is not doing agriculture or wants to keep his possession through nominal use of the land for agriculture, he is responsible for depriving another citizen of his right to live which is against our

law and against the spirit of our Constitution.

6.48 It is a matter of gratification that the ordinary people are becoming conscious about this Constitutional position and their basic rights. They are not prepared to bear with the fact that the Government should not implement the law enacted by itself or may implement it in a slipshod fashion or the officials knowingly disregard and close their eyes towards its violations. He is indifferent towards those processes of judicial system in which even the most basic right of human societies, that is, right to life, may get over looked. He is losing patience. Therefore, he is forced to take one-sided action against injustice for establishment of his rights. In this situation, the other side, even the Government itself dubbs his action as improper giving reference to the procedure, rules and the law and considers use of State authority against him as appropriate. An urgent review of this situation is necessary.

6.49 All these struggles basically reflect confrontation between two rights - on the one side is the right to life and on the other side right to property. The right to life is much higher in priorities than the right to property. In fact, right to property has not been recognised in our Constitution. Therefore it is the first duty of the State to protect the right to life of the people. The State should not lose even a single day with regard to providing protection of Constitutional rights of the members of the Scheduled Castes and Scheduled Tribes - to do so will really be an open disregard of the Constitution. The present laws should be appropriately implemented and, if necessary, suitable amendments should be made therein to ensure that the worker does not get alienated from means of production and that he can make his living through their use. And the State authority should support the claims of the people in such struggles unequivocally.

## RIGHT OVER MEANS OF PRODUCTION - 3

### QUESTION OF BONDED LABOURERS

In the process of deprivation a stage is reached sometimes when a person is forced to trade his liberty. He becomes a bonded labourer attached to a Zamindar or to a contractor to work in a field or a plantation brick-kiln, stone-quarry or a carpet factory. He gets only that much wage which is sufficient somehow to keep his hands moving. When this bonded labourer is no longer of much use he is thrown away like a sucked fruit and a new person is taken in his place from the long que of the poor seeking that job - for working like his predecessor until his body can bear the strain and in the end to be thrown away like him after being completely sucked.

7.2 This inhuman practice had been abolished in our Constitution. A number of laws were made for implementing this national resolve. Keeping a bonded labourer is an offence and the person is liable for punishment for that offence. Some persons had been punished but such cases can be counted on fingers. A number of voluntary institutions also came forward and did some good work but even after success in all these actions and liberation of the bonded labourer, the question of his living has remained as it was. The reality is that he was assured of at least two meals in that enclosure called bondage. When he comes out of that enclosure he gets freedom but spectre of uncertainty begins to haunt; and when there is no other alternative he seeks refuge with some other master, if not the same. In the end the status-quo is restored.

7.3 The Government has prepared a number of programmes for economic rehabilitation of bonded labourers with a view to break open this enclosure. There is a provision under these programmes for a minimum economic assistance being given to the bonded labourers soon after their liberation. They could also be given facilities under other poverty alleviation programmes. There has been some success in these programmes as well, but many bonded labourers are unable to stand on their own feet even after getting assistance of all descriptions and get bonded with someone or the other again or they obliged to roam about aimlessly without any support. Many bonded labourers are not able to get the Government's help or other forms of assistance. Therefore, their condition becomes still worse.

### Freedom is Non-negotiable

7.4 The law for abolition of bonded labour is quite comprehensive. The position in accordance with the spirit of this law is that if any system leads to the surrender of freedom of an individual, it is wrong and the person who is responsible for creating that condition is guilty of a penal offence. In the present day complex system, a person can be deprived of his freedom in a variety of ways. The simplest way in this regard is the use of force. But the trap of money has been used most effectively for continuing loss of freedom. Both these aspects have been kept in view fully in the law concerning abolition of bondage. Therefore, any agreement, according to which a person may not get due return for his labour, comes within the ambit of bonded labour and therefore, becomes a penal offence. The practice of forcing a person to work at low wages after taking the loan is included in this. The agreement for advance purchase of crop at a depressed price against credit, is also a form of bonded labour. Moreover, according to the decisions of the Supreme Court any situation, whether on account of loan or otherwise, in which labour is engaged at less than minimum wages come within the ambit of bonded labour.

7.5 The exploitation in the form of advance purchase of crops at lower prices and depressed wages is so pervasive in the unorganised sector, particularly the village economy, that almost all types of labour there will be covered under the term bonded labour. Therefore, there are serious differences and even considerable confusion about identification of bonded labourers amongst administrators and also social scientists. There are two sets of arrangements which are generally considered as bondage. Firstly, there are cases in which a person is forced to work under social pressure or physical coercion. Secondly, there are cases where a person is obliged to work because of a loan or other forms of money power. There has been considerable misunderstanding on the question, not only amongst the officials but even amongst the political leaders, whether the arrangement, in which a person is obliged to work because of loan or use of money power should be treated as bonded labour. It is usually argued that after all if a person pays advance for hiring a labour then some condition will have to be imposed. If such a person does not wish to work for him, he should repay the loan. In this way it is generally assumed that a person has to work in lieu of advance and this obligation is not considered as

bondage. This practice, therefore, is taken to be valid at least implicitly if not explicitly. Therefore, it is necessary to clear the intention of the law and also the situation.

7.6 Advance is a loan and a contract of payment of money is a civil matter, but employment is a contract for doing work in which the person agrees to work for an other person of his free will. There is one special feature of this contract, that is, it has to be entirely based on free will. No form of compulsion can be allowed to be used against any person in this regard. To work according to one's will, or not to work, is accepted as a basic human right. If a person is under obligation to work for any person or not to work, this human right is violated. It also violates the right of personal liberty enshrined in our Constitution. It is the duty of the State to protect personal liberty. Therefore, if a person is obliged to work simply because he has taken loan, such an arrangement is unconstitutional and violation of human rights. So long as there is no clarity about this point at all levels, ambivalence about bonded labour will continue.

#### Partial Implementation of Law

7.7 In implementing the law of bonded labour no action is usually taken against a person who violates the same. The emphasis is on liberation of the bonded labour. Therefore, so long as the action under the law is confined only to the liberation of the bonded labourers, it does not make any difference to the employer. It only involves loss of a labourer to him about which he is not concerned. He is bound to get another person in his place. In this way the programme for the liberation of bonded labourers, no doubt, benefits some of those persons, who may have been bonded, but the practice of the bonded labour continues as it is.

7.8 There is yet another aspect of the scheme of the rehabilitation of bonded labourers after their release. The provision of a grant for the rehabilitation in the scheme was made with good intentions, but this scheme has resulted in the deterioration of the situation in the field. In many cases a person may be presented as a bonded labourer for the sole objective of getting the benefit of rehabilitation grant. The money due to the bonded labourers is misappropriated by the employer and the official. In this situation it is difficult even to identify the real bonded labour. Their situation remains unchanged.

7.9 A basic change in the present thinking is necessary for a real solution of the problem of the bonded labourers. After all, a bonded labourer is engaged in some work or the other. However, he is being subjected to two constraints - firstly he doesn't get full wages, secondly he has no freedom to leave his job at will and take up another job. The present situation about employment in our country is rather bad. Everyone knows that unemployment is increasing and it is difficult to provide a reasonable work to the poor. The opportunities for self-employment are also limited and success therein is rather difficult to achieve. In this situation the idea of liberation of the bonded labourer by taking him out of the work which he is doing is rather incongruous. Therefore, the formalities of the programme and also the law are fulfilled in the process of liberation of the bonded labourer but the basic question about finding a real solution to that problem, is knowingly ignored.

#### Real Liberation of the Bonded From Whom?

7.10 Broadly, there are three constituents of any economic activity - the owner, the means of production and the labourer. As we have seen earlier, like land, other means of production, are also like property to the owner. But the same means of production are a source of livelihood to the labourer. Therefore, justice would demand that no one except the labourer should have a right over means of production. But until such time as this unjust system is not ended and the means of production continue to be under the control of the owner can it be said that the worker cannot claim a right of making a living from that means of production. The right to life is basic and it is the responsibility of the State to protect it. The right to property is not basic; it is also not given under the Constitution. Property can be taken away; but no one has the right to deprive a person of the right to life. It is on account of lack of clarity on this basic point that the right to life of the labourers, who are bonded, is not protected knowingly or unknowingly, on the premise that the right to property of the owner cannot be touched. In a bid to liberate him from the bondage he is separated from the means of production on which he depends for his living. This is not justice; it is also not in accordance with the spirit of the Constitution.

7.11 There is a basic defect in the present policy about bonded labourers. It is the owner who is responsible for putting the chain of bondage around

the labourer. The establishment in which he is working sustains his life. It is an irony that the plan of his liberation cuts him off from his life support system, rather than cutting the chains of his slavery. This basic mistake must be corrected. While chains of slavery of the bonded labourer are cut should be taken that he is not cut away from his life support system. He has a right over his life support system, that is, the work which he is doing and the establishment in which he is engaged. The protection of his basic rights and cutting the inhuman relationships will comprise the real liberation of the bonded.

7.12 Thus the programmes for abolition of bonded labour system should be based on three basic principles. Firstly, the Government should ensure that the person continues to work where he has been working. Secondly, he should get a reasonable wage. Lastly, there should be no obstacle in the way of a person, if he wishes to move out of his employment.

7.13 If action is to be taken in accordance with these principles, it will be necessary to keep in view the conditions in which a bonded labourer is working and the plan of action for each may have to be quite different. We will discuss the conditions of some specific categories of labourers in some detail which account for the bulk of the bonded labourers. The first large group of bonded labourers is accounted for by agricultural and plantation workers. The second big group comprises labourers engaged in mines and brick-kilns. The discussion about these groups will also throw some light on the possible plan of action in respect of bonded labourers engaged in other occupations.

#### The Shackle of Land

7.14 A lot of discussion has taken place on the practice of bondage through payment of advances or loans. But there has been no discussion about those bonded labourers who are given a small piece of land and are obliged to serve big landlords. One thing is clear about land and cultivation. A person has a right to remain in continued possession of land and cultivate the same. The protection of this right is the responsibility of the State. Therefore, in such cases of bonded labour, the first thing which must be clearly stated and effectively implemented is that the bonded labourers should be able to continue his cultivation on the land which he may have been cultivating earlier. The owner has no right to remove him from that land. If the owner wants him to work for him, then that can be done only

with his consent and by payment of due wages. If that person gets an opportunity for working elsewhere he should be free to work there instead of continuing to work with his master. He cannot be evicted from the land because he may not work with its owner. The right over the land which he cultivates, notwithstanding the fact that it may have been given to him in the beginning as a part of labour contract and employment as labourer are two entirely different issues.

7.15 The bonded labourers are also participating in the struggle of Solé village which we have referred to earlier. It is the responsibility of the State to ensure three things in respect of these bonded labourers, namely, (i) protect their right on land, (ii) ensure payment of minimum wages and (iii) freedom to work at any of their choice. If the owner puts any obstacle in their way, the land allotted to these people will be the best evidence of the fact that they have been kept as bonded labourers by him against the provisions of the law. It is a common knowledge that these labourers have been cultivating year after year; the land given by the landlord nobody can deny it. If the owner says that there was no restriction on the labourers nor there is now, he may be taken at his word. It will mean that the labourer has the right to continued occupation of the land which he has been cultivating. It is surprising that no legal action has been taken against the zamindar who has kept twenty-eight people as bonded labourers even when such a clear legal provision exists. Not only that, this year trouble was created when they cultivated the lands. I trust that justice will be done in the case of these poor, many, of whom belong to Scheduled Castes and the offender will be punished.

7.16 Innumerable zamindars and owners of big farms in our country are maintaining their occupation and titles over thousands of acres of land through such bonded labourers. These labourers are tied to the owners through the allurements of a piece of land. These labourers have the right to tell the owners that they will not leave the lands which they have been cultivating. If the land owner wants them to work for him, they are ready to work provided they get due wages. If people shackled by such chain of slavery make a resolve not to leave the land it is the duty of the State that they should protect their right to life and support them in their struggle. It is necessary to enact a law to end this state of slavery of agricultural workers. Rights over land should be granted in favour of all those labourers whom the owners are keeping as bonded

through the assignment of land. If such a law is passed, the present state which is against the Constitution, will end. There will be no dissonance between the law and the Constitution and the people will get justice and right to life.

### Debt or Bondage of Helplessness

7.17 Most of the bonded labourers in agriculture are either bonded on account of indebtedness or because of their helplessness. As such they are forced to work howsoever low their wages may be. Much of the action with regard to the liberation of the bonded labourers has been in the area of termination of debt bondage yet there has been no significant improvement in the situation. So long as there is no alternative arrangement for credit and there is no change in the people's perception that they have a moral duty to work if they have taken a loan, the possibility of a basic change with regard to the bonded labour is rather remote.

7.18 Nevertheless, I wish to draw the attention to one specific problem in this regard. When cases of bonded labour are instituted in a court, the owners usually take the plea that "I have not given any loan and such person is an ordinary labourer" and thus, gets absolved from all liabilities. The proceedings in the court are over in this way but the pressure of the owner on the labourer does not relent. He is forced to work or pay back the money even after that statement. It should be the duty of all courts in those cases where the owner claims that no loan was advanced, that a copy of the statement to the effect that there is no loan and the order dismissing that case on that ground, should be given to the bonded labourer automatically without any payment of the fees, so that the labourer has a proof and if there is any pressure for repayment of loan or for continuing to work as labourer, he may be able to present the same and may even institute a case of contempt of court.

7.19 Where a person is required to work at wages less than the minimum wage, he can be deemed to be a bonded labourer. But numerous variations are possible in such cases. On the one hand, there are small farmers whose economic condition is such that they cannot pay minimum wages. If payment of minimum wage becomes obligatory they may prefer not to engage a labourer. But there are no such constraints in the case of middle or big farmers and absentee landlords engaged in other occupations. Therefore,

the administration, if it so wishes, can ensure payment of minimum wages in these cases. Non-payment of minimum wages is not only contravention of the law of minimum wages but is also a penal offence under the Bonded Labour Act. Therefore, the administration, after explaining the legal position in this regard, can force them to pay full wages for the entire period for which the labourer may have been kept against those who indulge in advance purchases of crops at depressed prices. If a person shows unwillingness to pay dues in respect of the wages or the price, then case can be instituted against them under Bonded Labour Act.

### The Bonded Trapped in Plantations

7.20 All types of plantations were founded during the British period on the system of bonded labour. But in due course the system of bondage more or less, broke down in most of the plantations even though there has been no significant improvement in their social and economic situation. We will discuss this in detail later. The most regrettable thing is that in many plantations the bondage of labourers remained unchanged and their condition is like that of prisoners.

7.21 The situation in the plantations located in the lower hills of Kodai ranges of Tamil Nadu is particularly bad. There are a number of small coffee plantations in which bulk of the labourers are paniyans which is a Scheduled Tribe. Their only occupation from childhood to old age is labour in the plantation. Their habitations have been kept knowingly away from the road deep in the forests so that they may not come in contact with people from outside. The wages are paid in kind—one-quarter of a measure of rice for the children. Three-fourth for men and a little less for women. The labourer is also given a pair of clothes, one shirt and a lungi, in a year which he continues to do till it gets tattered and hangs on his body like jumble of thread telling the tale of his listless life. He is at the mercy of the God in case of sickness. Each one of them is buried in debt. It is said that it is possible to count the hair on head of a paniyan but it is not possible to calculate his debt, after all who can count and for how long".

7.22 Thus the life of these helpless tribals continues to wear off in these coffee estates which they nurture with their sweat and blood. They do not have even two cubits of land which they can call their own in this alien native country of theirs in which they may get hurried after, they

die and get mixed with the earth from which they had blossomed earlier away from the world on the otherside of an unpregnable wall which no one can dare to jump over or even peep through are imprisoned these human figurins friendless and forlorn and their small world.

7.23 These coffee plantations are gold mines for their owners; they are valuable foreign exchange earners for the nation; but the very same plantations cannot even provide two square meals and a pair of clothes for covering the bodies of their real planters who nurture them with sweat and blood. What should be done in this situation - liberation of the bonded and their rehabilitation? Will any talk of liberation of these people not be a real mockery of that system which may deprive the 'prisoner' of his ration and tenuous shelter in the name of social and economic justice? The real question in these cases is, not of liberating those very labourers from the plantations who have established them with the sweat of their brow but of enabling them to lead a life of dignity in those estates and participate in their management.

#### Bonded labour in Kiln and Mines

7.24 The other major concentrations of bonded labour are in mines, brick kilns, carpet factories and such like. The emphasis in the liberation of bonded labourers engaged in these works so far has been to take them out of those activities and put them on to some other work. The bonded labourer after release gets rid of the owner and becomes free to take any other work. But this does not last for long. These persons get trapped again, either in the same establishment or in some other place.

7.25 As we have discussed earlier, while there are some issues of principles no doubt, but the question is also that of implementation. All these establishments are going concerns. The production is going on, the labourers are getting wages and the owners are earning profits. In this situation why should it be necessary to take away the labourers from there establishments who are victims of injustice. After all the workers engaged by these establishments have a right to continue working there. It is the responsibility of the State to ensure that the labourers get their due wages and there is no exploitation by their owners.

#### From Kota to Sonabhadra - A Tract of Helpless Bondage

7.26 There news about the bad conditions of workers in brick kilns and mines is a common feature now. Many workers in these establishments have

also got some relief. But even then the condition in some areas is extremely bad. The Saharias and Kol tribal communities are found in a tract extending from Kota in Rajasthan through Sheopur and Shivpuri in Madhya Pradesh on to the MP-UP border. These communities are the most oppressed. In the beginning these people mostly used to earn their living from the forests. But now in these areas either the forests have disappeared or these people have been expelled from the forests. The end result in either case has been the same. While these people have been rendered resourceless, they could not take to agriculture. Wherever some of them had some good agricultural land, it also went out of their hands. Now, labour is the main occupation of these people.

7.27 The Saharias and Kols in this entire area are firmly in claws of other people. In some places they are bonded labourers on agriculture and in others in stone mines. The main resource in this area next to forest is the stone. The outsiders have set up mines at numerous places, throughout this area some are legal but mostly illegal. These mines have also become the biggest mines of bonded labour - many of these labourers are Kols and Saharias.

7.28 Many big people have established stone crushers in the Sonabhadra district of Uttar Pradesh on tribal lands and thousands of Kols are working as bonded labourers in them. Their owners are so strong that even social workers hesitate to raise this question, let alone the administrative officers. Let sleeping dogs lie. Similar or even worse conditions prevail in the southern parts of Allahabad and Banda. Recently the trainees of Lal Bahadur Shastri National Academy of Administration, Mussoorie, had gone to Banda. After reaching there they got air about the pitiable conditions of labourers in Itwari village of Ramnagar Block. Therefore, they thought of visiting the area and seeing for themselves their condition. On hearing this, they were advised by everyone, starting from the District Magistrate to the lowest official not to go there. They were told it is dacoits-infested area. What you will do by talking to labourers? Your own life can be in danger. Even then a team of two trainees took courage to go to the place and talk to the labourers. Some 53 labourers were working in a deep mine there. There may have been some 30-40 labourers elsewhere.

7.29 The labourers in these mines hail from the same village or the neighbouring villages. The workers come from all castes, but the majority

comprises Harijans. These people consider working in these mines as their fate; there is no way to get out; the mine has become their life itself or their life has got inexorably linked with the same. Some of them are also indebted to the owner, but the real compulsion for working here is not of money. If someone dares to refuse to go to work, he may be killed, his hands and feet may be got broken; beating is an ordinary thing. Ten, twenty, fifty no one knows how many years have passed by while working in these mines.

7.30 The headman of the village is the owner of this mine. Lifting a girl or a woman is an ordinary thing for him - the trainees were told about six cases of rapes in a single week. Whatever the worker may get in the name of wage that is enough - the daily earnings ordinarily maybe between Rs.2 to 6. They thank their stars if they get "five quarters of jowar".

7.31 Even the trainees were reprimanded when they continued their dialogue with the labourers and they were forced to go away with a warning that even they can be manhandled. When the situation about this area was discussed with the district administration, then only outcome was - the same questions and the same answers - 'Who are bonded'? 'Afterall, these people at least get something?' And in the end, "What to do, the area is like that?" That was all.

7.32 That the condition of labourers can be so bad even after 40 years of independence is unthinkable, but the events described above are ~~fact~~ not mere tales. According to the trainees the situation in this village is no doubt the worst, but the condition in the entire district is rather bad. Moreover, the trainees could not reach the patha area which is the home of Kols. It is said that the condition there is so bad that less said the better.

7.33 This is not the first discovery about the bonded labourers. When the law abolishing bonded labour was enacted for the first time in 1975, innumerable cases of similar types came to light from almost all parts of the country to which no attention had been paid earlier. But what can be said about the above situation in which even today after 14 years of the enforcement of that Act; such exploitation is continuing in such an ~~extensive area~~ which is within the know of administration and which is also

known to social activists, but against whom face is turned with a simple innocent statement "what to do?" This violation of human rights is not matter of regret but is a matter of shame - for everyone in the nation.

#### The Perpetual Lease of Shankargarh

7.34 An important case of mining in this area relates to Shankargarh gave an perpetual lease of mining in respect of 46 villages in the name of Ranisahiba for a consideration of Rs.4,000 per year. Mining is being done by the Ranisahiba under this lease openly not only in 46 villages but a much larger area. The condition of workers in these quarries is as pitiable as of other workers elsewhere in this tract. The District Magistrate had given a notice to the Ranisahiba some 10 years back for getting the entire mining activity reorganised under the new law. The Ranisahiba has gone in an appeal before the civil court. Eversince the case has got entangled in the court proceedings.

7.35 The administration is unable to take any action in this case, even though it is well known that the entire mining activity in Shankargarh is irregular. The Ranisahiba is concerned with the instant profit. Beyond that she is neither concerned with the depletion of those resources nor is she worried about the entire area becoming disolate and revined.

7.36 The rules and laws have got entrapped in the files of the court. On the other hand, if people, whose life is directly linked with it, raise any objection in this matter or talk about their rights, they have to face oppression from all sides. In this way the old feudal system is continuing to maintain its monopoly on the local resources with the help of the legal traps. And the workers are being exploited relentlessly without any qualms of conscience taking advantage of their helplessness.

7.37 Women and children are given preference in all works related to mines. Firstly, the children can easily do more running about. Secondly, they can be engaged at lower wages. In this entire area children and women can be seen to be running with baskets, on their heads, full of metal, sand or earth, so that they collect enough 'tokens' by the evening which will fetch them sufficient money for filling their bellies. In some establishments the wages of men, women and children are about Rs.9, 7 and 4 per day respectively whereas in the formal accounts they are shown to be Rs.26/- per diem. The employment of women and labourers like this is the last stage in the process of exploitation and is an example of

his biological exploitation about which we have discussed earlier. The irony is that according to the district administration, the system of bonded labour does not exist in the entire district of Allahabad.

### Towards a Solution

7.38 There has to be a solution to this problem and similar other problems. To achieve this, it will be necessary especially to cut through the variety of legal traps and tricks. In mining cases there are broadly two typical situations. Firstly, is the situation where the work is being done on the basis of proper government leases. Secondly, the working may be illegal without any permission from the government. Where the establishment is illegal, the solution is comparatively easier provided the administration considers the issue from the side of the labourers. Ordinarily, when an illegal activity comes to the notice of the administration, it is either closed down and the culprit after whatever can be salvaged seeks some other work or finds some other place. Alternatively, as in the case of Shankargarh, the owner continues with his work as usual after creating a legal tangle. In the first situation, the labourer has to lose his bread. In the second situation he has to bear with the excesses of the master. Both these alternatives are not desirable. In these cases, the administration on its own should ensure that (i) the people engaged in the activity continue to work in the same, (ii) they get a legal right for continuing that work and (iii) the offender is severely penalised. In this way, the economic activity will continue, the people will continue to earn their bread and the exploitation will automatically end.

7.39 There should be no big problem in getting justice for the workers in establishments run with the permission of the Government. All these establishments are connected with the supply of material for construction or industries. Therefore, they are active partners in the organised sector. All activities of the organised sector are quite strong economically. All the workers in this sector are getting good return for their labour and the owners are also earning a good profit. Since all these establishments are extensions of the organised sector, a situation in which the labourers working in them do not get full wages and many of them are bonded labourers is extremely incongruous and unjust. Even if a particular establishment may not be running in profit that fact cannot be taken as the basis for not paying minimum wage to the labourers engaged therein. If the owner of an establishment does not break even and is not in a

position to pay minimum wage, he should close down that work. It is worth mentioning here that the Government itself takes the direct responsibility of running many establishments in the organised sector incurring loss such as cotton mills, so that the labourers engaged therein do not get unemployed and they continue to get full wages. Therefore, the effort even here should be on similar lines to ensure that these establishments are not closed down and the workers continue to get full wages. But it is doubtful whether the Government will be able to manage so many small establishments. Therefore, the most natural solution of this problem should be that if an owner declares that he is not able to pay due wages because he cannot afford, his licence should be cancelled and if the labourers want that establishment to continue, it should be transferred in their names.

7.40 Thus, whether an establishment is earning profit or incurring loss, if the labourers are not receiving minimum wages they are bonded labourers. And then those engaged in these establishments are obliged to continue working either because they are indebted or even when not indebted then under socio-economic pressure. It is unfortunate that no attention has been paid to the millions of labourers working in these establishments. If even now the government does not give justice after examining their problems, the officials continue to overlook the crimes after just taking notional action, the people have a right to bring these matters before the Government and the Government must take measures for setting them right. If even then the owners do not mend their ways, the Government should take over the entire establishment or may hand it over to the labourers. The Government should give necessary help to the labourers for running the establishment on cooperative basis. It is not necessary that cooperative societies should be established for this purpose - the poor can work jointly as well even otherwise.

7.41 The rights of the owners in relation to these establishments, which may have bonded labourers, should be terminated and strong legal action should be taken against them. Those who indulge in trading of liberty of citizens have no moral right to fight for their right to property. If they are not brought to book before the law for that grave offence and are not awarded severe punishment, that will be the biggest concession to them. The worker should have the right over means of production, especially in those situations where they have been obliged to trade in their own liberty.

## COMMAND OVER RESOURCES - I

PRINCIPLES AND LAWS

The natural resources can be broadly divided into four groups with reference to their use in the life of the common man (i) Forest, (ii) Grass Lands, (iii) Agricultural Land and (iv) Water. In the beginning man was entirely dependent on forests. He collected roots and fruits from them and hunted wild animals. He used the water bodies, wherever it was possible, for fishing. But as the pressure of population increased it was necessary to expand the scope of the use of natural resources. After the early stage of hunting and gathering he started cattle rearing in some places which enabled him to make use of grass lands. In the end when the pressure of population further increased agriculture was invented for producing grains for food. Thus man has been clearing forests and grass lands according to his needs and making them suitable for agriculture. With the extension of agricultural lands the forests and grass lands were gradually shrunk.

Three Forms of Entitlement on Resources

8.2 There was a new turn in the socio-economic system after the advent of agriculture. With the use of natural resources in the form of agricultural lands a new process of claiming personal rights thereon began.

Initially, this right was limited to the use of land. No one had ownership rights. But even after establishment of this limited personal right over land and other resources, namely, forests, grass lands and water continued under social control, a system which, more or less, continues in assence even today. However, there had been a change in the form of the right of the community. The place of community has largely been taken by the State. In the modern age, the scope of the right of the State is expanding at a fast rate.

8.3 A variety of new wants have been added in the new phase of development in many communities particularly after the industrial revolution. A variety of new industries and occupations were started for meeting

these wants. The natural resources were also accordingly but to a variety of new uses. A number of rights of a completely new genere have been created on these resources for supporting new activities, and they are increasing every day. It is necessary to keep in view an important fact in this phase of change. There are two sets of claimants for the use of natural resources during this phase. Firstly, there are people who have been living on them from the earlier days and secondly those who are using them for new purposes. The rights of the first group have been largely ignored.

8.4 In this way there are broadly three different types of rights on natural resources which will have to be considered separately. The most extensive use of natural resources is in the form of agricultural land. Therefore, the first important question is about right of the tiller of land. Next to agricultural lands are forests and waste lands which include grass lands and pastures. Therefore the second big question is about the various forms of use of these resources other than agriculture. It is this question which is most complex and the interests of the weaker sections, which include most of the members of the Scheduled Castes and Scheduled Tribes, are also closely linked with these uses of natural resources. The third form of rights over resources are related to minerals and forest produce in which the role of the State and modern institutions is important.

The Beginning of Wrong Entitlements over Resource during British Rule.

8.5 We have seen earlier that new economic system was established during the British rule in our country in which there was no regard for our own traditions and the Western values and promises were accepted without much thought. According to the tradition of our country, the village community enjoyed full command over resources. These resources were means of livelihood of the people. They could not be claimed as personal property of anyone. But the British Government created the natural resources as private property. It is in pursuance of this premise that zamindaries acquired right over agricultural land. The resources which were not under private ownership came under the government control. In this way the Government took possession of the forests. In the beginning of ownership of government was largely a legal formal matter. Other people continued to use the resources not owned personally. But in the

changing situation they lost their rights over the same whose consequences were realised only gradually.

8.6 When the natural resources were being divided by interested parties in this way, a very important point was completely missed. In an ancient country like India there could be no possibility of such resources on which some people or the other may not be dependent for their living.

This in fact is the situation in the whole world. The man in his long history has learnt to live on all types of resources including forest and hills, river valleys deserts and icy lands and evolved a style of life suited to the situation in each case. There is no place in our country whose resources may not be linked with the right to life of some people or the other.

8.7 But there was no appreciation of local traditions in the new formal system established by the British. Therefore, only those rights could be recognised on these resources which are formally accepted by the State. It was for this reason that wherever the State, knowingly or unknowingly did not recognise the right of a community or a group in relation to the use of the natural resources, their basic right to earn a living itself was extinguished. In this way, there was great injustice with regard to the right over resources. In the new system on the one hand personal rights of a few individuals like the jagirdars and zamindars get established on extensive resources. But by the same token the common man and the weaker sections did not get any rights for their use. They were left to the mercy of others for their living.

8.8 It is matter of regret that this process has continued even after independence. There is not even a realisation about the problems of these people who are located at the margin of our economic system, let alone their rights. In the absence of due entitlement, these people become resourceless and targets of deprivation. They are gradually being pushed to the precipice of destruction.

### The End of People's Entitlements on Forest

8.9 With a view to understand the present situation about entitlement over natural resources it will be useful to begin with the entitlement

of forest dwellers. These people have been living entirely on the forests through the ages. Thus the forest dwellers have enjoyed a natural right over them. This right is self-created which does not require recognition from anyone else. The life style of forest dwellers has also been changing in the course of history. Even though their life style is similar in many respects, significant variations occurred in response to the local situations. Some communities are still living in a primitive state.

These people are entirely dependent on forests. In reality these communities and forests really comprise a single entity. Therefore, the question of any adverse effects on account of the activities of people living in the forest does not arise.

8.10 Some tribal communities practice shifting cultivation for which they clear fell the forest. These people use the same patch for agriculture for a year or two and then move on. They come to the same place after some time in a cyclical order. Some communities have gone beyond the stage of shifting cultivation and have become settled cultivators. The area under agriculture has been increasing through out the world with the growing pressure of population and to that extent the forest areas have been shrinking.

8.11 A basic change in the relation to this natural entitlement over forest occurred in the sixth decade of the 19th century when the Government decided to take over the management of forests in our country. In the beginning the British Government was interested in forest for its valuable timber. But gradually the forests began to yield good income. When the government started preparing regular plans for increasing, their revenue from the forest and ensuring that it may continue in future, the biggest obstacle appeared to be the people living there. Therefore the Government had to enact a law under which the forest areas could be separated from other areas and their management could be done in a way that no other rights were allowed therein and the forest dwellers could be removed there from. This law was passed in 1965.

8.12 The law was enacted, but it was forgotten that many people have been living in these areas for thousands of years. These forests were not only the source of living for them but their entire life, their history,

their culture, their emotions and their religion, everything was linked with it. The forest dwellers were not ready to move out. But it was not possible for them to resist the onslaught of the British power. Even then they did not allow the Britishers to take control of forest easily. Ever since these areas have intrasted one revolt after another against the new legal system. All these revolts were put down by the government with an iron hand. But even then that fire is not completely extinguished. It is simmering everywhere through out the forest areas. It gets flaired up here and there at times when fanned by strong winds of oppression.

### Expulsion of People from Forest

8.13 A special feature of the British rule was its formal system according to which all actions had to be in accordance with some rule or the other. So much so that rules had to be made even for depriving the people of whatever they had. In other words, the British created a cover of law and rules for advancing their imperial interests. When rules got framed it became a duty of everyone concerned to obey them and act accordingly. This was also the case with regard to forest laws. The Government officials got busy with performance of their new duties after the enactment of Indian Forest Act, 1965. The great objective of all activities was the protection of forest. The formalities set out in the law were followed when the forests were taken over by the Government. Thus the forests in one areas after another gradually came under the authority of the State and attempts have been made for removing the original inhabitants from them. A variety of methods were adopted for this purpose.

In some cases, they were removed by force and in others, through deceit. In some cases allurements were given so that they could move out of their own. In the formal proceedings about reservation once thumb impressions of the people were obtained on the paper as a token of their acceptance of government proposal, it become an agreement. After the agreement was executed, moving the people out of the forest became the duty of the officials. In this way, the government acquired dual authority to remove tribal people from the forests.

8.14 Some sensitive officers opposed this process. They also recorded what happened in the tribal areas in pursuance of this policy a token of compromise between their duty and their inner voice. They also wrote

to higher officials, But when they found that it had no effect they got busy in performing their duties ignoring their own understanding and inner voice. Take any areas, be it, Singbhoom or Bastar, Adilabad or Nasik, the story is the same. Gradually government acquired monopoly over the forests. In these cases where the government has not been able to consolidate its authority fully, and where the people are still resisting, the State's effort to extend its authority is continuing.

8.15 The tribal people have not forgotten the earlier history even today. They believe that the soul of their ancestors live in the forest. They visit their old habitation once a year and worship them. In many areas their old fields and bunds, remains their old habitations even now are reminders of the heavy traditions of their lineage. When the tribal under the pressure of growing population and stronger people feels the need of more land for making a living, he can think of only one thing that is to move into the forest where once his ancestors lived and start living there once more.

#### The condition of Remaining People

##### Shifting Cultivators

8.16 These attempts of the government for taking over the control of forests succeeded easily only in those areas where the tribal people had started practicing some form of agriculture. In their case it was possible that they could prepare some land for agriculture outside the boundaries of the forest taken over by the Government and get settled there. But there were many such areas where the tribal people did not know agriculture at all. These people were living by hunting and gathering or were dependent on practicing shifting cultivation which involved clearing of forests and burning the debris. In these areas the conflict between the people and the government about the use of the forests continued over a long period. In some areas it is continuing even today since the people have no other alternative for making a living. Therefore even though the forests have been formally declared as belonging to the State yet the people have not moved out. The people are even now practicing shifting cultivation according to their custom in extensive areas of Orissa and Andhra Pradesh. Similar situation prevails in many areas of the North-East. In some cases people stopped shifting cultivation under the pressure of government and even moved out of the forests.

But when it was not possible for them to make a living outside, they returned to the forest and resumed shifting cultivation.

8.17 In many cases even though the tribal people are doing shifting cultivation yet they have no right over the lands. Their shifting cultivation is illegal. Therefore, attempts are being made incessantly to remove these people by using the authority of law. In many areas they were forceably removed and in some cases through allurements of agricultural lands. Innumerable small shifting cultivator communities like Saharies, Baigas and Hillkorbas in Madhya Pradesh, Konda Reddies in Andhra Pradesh and Juangs in Orissa, who had been leading a life of dignity and freedom in these forests for centuries, were thrown out all of a sudden. These people are now resourceless and they have no support whatsoever for making a living. These small communities could not put up resistance and their voice was so feeble that it was not heard anywhere out. No trace was kept of many of these people about where they have gone and what happened to them. Nothing is known about many of them. In many places these forests are now exclusively belong to Government. No one has a claim on them. There is no possibility of any claimant appearing in future.

This process is continuing even now. The entire process is in acceptance with the law. But it is under this process that the people have been deprived and are getting deprived of their means of livelihood or their right to life.

### Nomadic Communities

8.18 There is another big group of nomadic communities in whose case also the process was somewhat similar. Many nomadic communities have been depending for their living on the natural resources through the ages. But their condition was somewhat different from that of other communities. These people unlike other groups, were not able to make their living from the resources of the same area. In fact there was a complementary relationship about the use of resources between these communities and others. These people used those resources which were either not used by the local people or were in excess of their needs.

The most important example of this relationship is that of Goojars who have been making a living by grazing their animals over a large area.

Some communities used to provide a variety of services to the local communities wherever they camped in the local area.

8.19 In this way the style of life of some communities was so evolved that the natural resources of one place were not sufficient for their life. Therefore, they could not be tied to the same place. These people moved from one place to another according to the season and made a living for the season. Cattle rearers comprise the biggest group amongst such people. Cattle rearing was an important stage in the development of human history. However only a few remnants of that phase have remained here and there now.

8.20 We have seen earlier that all the rights other than personal rights over the natural resources were ignored by the formal system established by the British. Such a new formal system had a very adverse effect on the nomadic communities. These people could continue to lead their life in accordance with their tradition before independence in spite of the new laws because the population was somewhat similar and resources plentiful. But the rights of these communities about the use of those resources after independence are getting compromised on account of growing population and the tendency for establishing personal rights over all sorts of resources ignoring other rights over the same. These people are gradually becoming entirely resourceless. A few programmes have been taken up for the development of these communities. But there has been no serious thinking at any level whatsoever on the basic question that the source of their livelihood or their right to life itself has got eroded in the formal management systems of natural resources.

#### People Located on the Margin of Village Systems

8.21 In the end when we consider the question of command over resources within a village, we find that the situation is not good. Even at the village level people have established personal rights over the resources taking advantage of the new formal system. But in that process the fact of a large number of people depending for their living on these resources as per their tradition has been ignored. The shepherds graze their goats and sheep ; trapping of animals was the only source of living for the Bahelias ; the poorest amongst them had to eke out a living by cutting grass and collecting twigs if nothing else, some brought firewood from the forest and some other knowledgeable persons collected medicines and

herbs. No right of anyone of these groups was recognised in the new system. They became completely dependant on the mercies of the system.

8.22 In the new phase of development the resources of the village came under dual pressure. On the one hand the agricultural land get extended to meet the requirements of growing population. On the other hand the stronger people have been trying to acquire personal control over the remaining resources. In some states formal institutions like Village Panchayats have also used the non-private lands and other resources in an arbitrary fashion. One regretting consequence of all this has been that the number of resourceless poor in every village has increased and their customary right over the natural resources get extinguished.

8.23 All these people after their resources were snatched away came to be known in the new system as landless people. A variety of programmes are being prepared for providing employment to these people. But the basic issue that they have lost their rights over the resources in the village and whatever remains is also disappearing remains unattended.

The basic reason for this is that our system does not recognise any rights over any resource unless they are somewhere documented and are somehow accounted for. The employment programmes are good in their place. But in this process the present life support system of the people, how so far fragile it may be is being lost. There is no thinking about what the people should do in the intervening period after their rights over resources are taken away and before they get another means of living. The people living on the margin in every village are becoming helpless and inconsequential as they are getting deprived of their right to use the natural resources. In the perception of our system such questions about their means of livelihood or their right to life are just non-existent.

#### The Intimate Relationships between Forest and Tribal and Change Therein

8.24 After the reservation of forests, a new type of formal relationship came into being in place of the natural relationship between the forest and tribals. As we will see later some rights of the people living in the forest were recognised in the course of reservation which later on were treated merely as concessions. With the passage of time even these

concessions did not survive. In this way even the formal relationship between the tribal and the forest has been changing. But in practice, this relationship of theirs, concerns their whole life in which there is no scope for a sudden change. Therefore a serious dissonance has arisen on account of which a number of disputes between the Government and the people are continuing even till, today. We will discuss later the basic reasons for these disputes and their practical side. At this stage only one point has to be made that many tribal communities living in the forest had no doubt gradually taken to agriculture but agriculture could not become their main occupation and is not so even today in many areas. These people depend on the entire habitat including the forest for their life. This is the most important special features of the tribal economic system.

8.25 In contrast the relationship of other people with forests is not direct. But they still depend on forests for many important items.

They purchase these commodities from the market. In this way the relationship between the natural resources and non-tribals in the new system is largely through the market. This market relationship is formal and not a natural one as between the tribal people and the forest. It is defined by laws and rules. The irony is that the modern State considers this relationship as the valid relationship. Therefore the State always tries that the direct relationship between the tribal people and the forest should, as far as possible, get reduced and be replaced by formal relationship. In that situation a basic change is bound to occur in the economic system of the tribal areas. As the system gets fully formalised, on the one hand the tribal will have to depend on the market for meeting all his needs while on the other hand the Government will be able to exercise full control over the forest without any interference from any other side whatsoever. It is in the wake of such attempts that a number of anomalies have appeared in the tribal areas which cannot be resolved easily.

#### Five Claims of Forests

8.26 In this way whereas exclusive authority of the State is being established on forest after ending the direct relationship between the forest and the tribals yet a variety of new rights formal and practical are being established on the other hand through the authority of State. In this transitional phase it will be necessary to understand the real

nature of these claims on the forest and to keep them in view while framing the strategy. Broadly there are five groups of claimants on the forest. The very first claim is that of forest dwellers which is natural and this claim is above all types of formal premises in that regard.

8.27 The second claim on the use of forests is related to the economic needs of people living outside the forest or that of the outside economic system. This claim is fully formal. The claims of the exotic economic system are determined either by rules and laws or they depend on market forces. The transaction in the open market are included therein. The leases to the industrial enterprises are also covered under the same.

8.28 The third claim on the forest can be taken to that of the State itself. For a long time, the interest of the State in practical terms has been limited only to the revenue from the forests. In the first instance a variety of taxes were imposed on forest dwellers for this purpose. Secondly royalty was imposed on commodities going out of the forest or attempts have also been made to earn profit directly from their trade. These claims of the outside system are economic in nature.

8.29 The other two claims on the forest are outside the ambit of economic relationships. They are firstly that of wild life and secondly that of the whole human society in the form of environment. In the quest of development, the man particularly, the man in the Western societies had taken all the natural resources to be as mere commodities for his own use. The man has become so powerful (today that he can command all natural resources unmindful) of all other aspects. He can use them in an arbitrary fashion according to his whim and fancy. Therefore, if we accept that nature is not the monopoly of man alone, the claims of other creatures are also established. Therefore, it is necessary to put some checks on the man himself. Moreover, the wild life should survive and prosper in its own right and it should not remain merely an article of use for the man alone. Therefore, the protection of Wild Life is also essential. Thus the fourth claim is that of Wild Life.

8.30 In the end the natural resources are the heritage of the whole mankind. They comprise the foundation of his life. The use of natural

resources so far has been made on the unstated premises that the resources were limitless and they will never end. Now it is clear from unwise use that they are getting exhausted and to that extent the support system of the human society itself is becoming weak. The forest are the source of pure air, good earth and continue flow of water. Therefore, it is necessary for the forest to remain real forest. This can be said to be the fifth claim, that is , the claim of Environment.

8.31 Thus, there are five claiments for the use of forest namely (i) local community, (ii) outside community, (iii) State and other institutions, (v) Wild Life and (v) Environment.

8.32 The first implication of creation of a formal system in relation to the rights over forests and their use has been that the forests have become totally state owned under the law. The natural rights of the local community on them suddenly ceased because there was no provision for the same in the law. In the new context, the traditional use of the forest by the people came to be recognised as rights or concessions given by the State of its own will. Consequently a very anomalous situation has been created in the tribal areas. It was presumed that there was no need to make a law in respect of rights of the people or concessions given to them which were essentially based on the will of the people or concessions given to them which were essentially based on the will of the State. At most rules could be made for them or they could be governed through Government orders. In a situation where all relations are formal more rules or government orders have no great significance. It was for this reason that the rights of the tribal people which were self-evident and sacred for them ceased to exist notwithstanding a variety of declarations and the great fund of goodwill. But in contrast, the basis of other interests other than local community could only be a formal decision. Therefore, the process of giving them full recognition by enactment of suitable laws in the formal system continued. Thus what was non-existent became the only entity which got full recognition in the new system. Similarly, a new law for protection and promotion of Wild Life, that is, Wild Life Protection Act was enacted in 1972 in place of old law. Forest Conservation Act was enacted in 1980 to specially protect and improve environment keeping in view the wider interests of the human society. The strengthening of this formal legal systems has had far reaching consequences on the life of the people which we will review in detail.

## COMMAND OVER RESOURCES - 2

Community and Forests

Formalization of the management of forests after they have taken over by the State was the next natural step. Moreover a variety of outside elements have entered in these areas and their number is continually increasing. The relationship of these people with the forests could not have been intimate like that of the tribal people but had to be functional. There could be no tradition which could guide the evolution of these new functional relationships. And there could be no social pressure on these outside elements. Therefore, it was necessary to formally systematize the use of forests in the new set up and make suitable rules for the forests for the same. The exotic groups themselves could also understand only the language of law. They could be subjected to the restrictions prescribed under rules and regulations only.

9.2 But if we look at this legal frame, which appears to be necessary in the new context, from the side of the tribal people it appears to be incongruous and inconvenient. The tribal people even now are living in their traditional style in which the life and the nature around are so intricately interwoven that it is difficult to put them in separate slots. Therefore their life and the forests cannot be systematically set apart in accordance with the structure of the new law. This situation is not appreciated by the new system. It has been trying to impose restrictions on the tribal people also in the same way as on the outsiders. It will be necessary to clearly understand that this is neither necessary in the case of the tribal society, nor is it useful even otherwise.

9.3 The style of life of the tribal people itself is such that he cannot remain concerned only with his own life; it necessarily includes a variety of other elements. The protection and preservation of wild life and environment are a part of his tradition. If there is any default in this regard, the consequences are there immediately for him to see. They become a part

a part of his lived reality from which he cannot escape. Therefore, the process of reform comes normally which, in due course, becomes a part of his tradition. In this way the system as a whole continuously moved on as a balanced system.

9.4 But if the State acquires control of forests, it becomes necessary to enact laws and frame rules for maintaining the desired balance. There are two important things in the new system which are responsible for any imbalance. Firstly, all these laws by their very nature, are always super-imposed. Since laws are enacted by the Central or State Legislatures, they have to be uniform for all areas. But the situation in each region may be quite different. Therefore, the law and rules formulated at higher levels are not necessarily in consonance with the life of the people, nor is it possible. Secondly, no distinction is generally made between forest-dwellers and others in all these laws and everyone is, more or less, treated alike. One consequence of such a law is that even ordinary things of tribal custom may be taken to be wrong, which is responsible for a lot of trouble which is beyond his understanding. Therefore, the condition in the tribal areas after the management of forest was systematized and formalized has been deteriorating rather than improving. That is why the relations between the people and the Government have become increasingly bitter and tension has been growing. In the end, there is a state of confrontation in many areas.

9.5 Broadly it can be said that on the one hand, the tribal's way of life is informal, simple and natural. But on the other hand, the government style of management of forest resources is formal which is quite different from the tribal's earlier style. The difference between these two perceptions is basic. Therefore the most important question is whether it is possible to adopt a middle path to end this discordant situation in the tribal areas. Before attempting to answer this question, it will be necessary to understand clearly the impact on the tribal life of the system, laws and rules made for managing the natural resources.

### Three Levels of Tribal Economy

9.6 Agriculture is acquiring greater importance in tribal economy. It however still satisfies only some of the necessity of tribal's life. He has to depend on other resources like forests, rivers and tanks for meeting his other requirements. In fact, agriculture meets only the foodgrains requirement of the tribal people. The rest of their life is dependent on

forests. The tribal does not need to grow fruits and vegetables, instead he gets a large variety of flowers and leaves, fruits and roots from the forest with a wide variety - different for different seasons. He gets fish and crabs from rivers and streams. Agriculture and forest produce in reality complement each other. It is believed that during scarcity, the forests are full of edible roots and shoots. Similarly, those people who have no other resource to fall back upon, seek sustenance from the forests.

9.7 There are some requirements of the tribal people as well, which they have to meet from outside through the market. They do not use income from agriculture for this purpose. Instead, they procure them either through barter of minor forest produce or with the cash earned by selling the same. If they require some more money it is earned by working for a while either in the forest or outside. In this way they meet the small requirements of salt, oil and clothes, etc., through minor forest produce or wage labour.

9.8 There are some occasions in the tribal society as well, such as ~~birth, marriage and death~~, when an individual may need something more. Such needs are ordinarily met through mutual help or exchange of cattle. But now use of money has also started. The tribal meets such big requirements usually through sale of cattle. Rearing of cattle is not a specialized activity in the tribal society, cattle are not specially tended, cattle are also a part of the habitat like men, they graze in the forests and grow naturally. That is why animals are known as pashu dhan ('cattle wealth'). The animals are his natural wealth in real sense of the term. They are his capital which can be drawn upon during times of need.

9.9 Thus, the tribal economy can be said to comprise three tiers. The agriculture and forests meet his ordinary daily requirement of food and such like. The minor forest produce is used for meeting small requirements from the outside world. The cattle wealth is used for meeting bigger requirements. In fact, animals represent his savings, they are his capital which automatically grows and which can be used during emergencies. In case there is no scarcity for a long time and there are no misfortunes which may use up his capital, he may use the same for entertainment and festivity.

9.10 After reservation of forests, some dissonance arose in this harmonious blend of agriculture and forest produce on which depended the tribal life. In fact this aspect of his economy has not been appreciated because of which it has got seriously damaged, albeit unknowingly. In the new setting the

tribal people had to seek permission of government officials even for the use of those resources which were a part of their long tradition. Secondly, there was competition for their use from outsiders. In the beginning the forest were so rich and the population was so small in these areas that the pressure of new requirements of outsiders made no difference for the tribal people. On the contrary, they get some benefit. For example, when a variety of forest works were started to meet the outside requirements, the tribal got an opportunity of wage labour. But this happy harmony did not last for long since the pressure of exotic demand gradually increased and the tribal himself was finding it difficult to meet his own requirements from the same resources. In due course, there was keen competition between exotic demands and the needs of the local people in which exotic demands proved to be much more powerful.

9.11 In the process of reservation of forests, the rights of the people and the question of meeting their requirements from the forests were formally considered and some action was also taken. But at that time, particularly in the middle of 19th century, not much importance was given to the question of determination of the rights of the people. In fact, at that time there was no clear understanding about the new formal system and the significance of formal recognition of people's rights. That is why while determinising the rights of the people, certain routine entries only were made in government records, such as, 'the tribal can collect such and such articles for his personal use according to his needs from such and such forest areas.' In some cases it was also conceded that they could also sell them in the market. But there was no clarity on the point that if there was competition between the requirements of the tribal people and the requirements of others with regard to the use of forest produce, in whose favour the choice will be made? There was no realisation that such contingency will ever arise.

#### Competition of Outside Demands - Destruction of Bamboos

9.12 Bamboos provide a good example of what exotic competition could mean in the new context. Bamboo is the timber of the poor man, he constructs his hut with it. Bamboo is also used for preparing the thatch of Kachcha houses. The tribal uses bamboo for fixing the hedge around his fields, for preparing mats for covering the floor and making containers for daily use. Bamboo is a raw material for house-hold industry for many. The flute of bamboo and the tender shoots add colour to the life of these simple people.

9.13 But these uses of bamboo have no meaning for the modern system. It was a weed in the forest according to them. This perception changed only after there was a demand for bamboo as raw material for paper and pulp industry. Now bamboo became useful for the modern system as well. In the new context, governmental thinking about the use of forests swang to the other extreme. With a view to increase government income and encourage and promote industrialization, long term leases were given to industrial enterprises for working of bamboo. The place of this 'weed' in the life of the people was completely ignored. Therefore, no body took care of what could happen to the needs of the people when bamboo will be intensively exploited from the same area by the new industrialists. If some provision was made for this purpose it was merely notional.

9.14 It is here that the implication of the strength of formal contracts and the weakness of the traditional rights of the people come to the fore. The contractor is concerned with the profit of the day. Secondly if bamboo is exhausted in one area he could search some another area for maintaining his supply line. Therefore, the industrialists ruthlessly cleared the forest on the strength of these contracts, making full use of the power of their wealth of influence. No body was concerned about the implications of such reckless exploitation of the forests on the well-being of the forests and the people alike.

9.15 The Government has been largely indifferent to the anomalies of such working of bamboos. But its adverse effects are clear to the people. For example, according to the Korba of Sarguja in Madhya Pradesh, their forests were full of bamboo - when they used to do shifting cultivation. They would clear the bamboo forest and burn the debris. But bamboo used to sprout with still greater vigour and the forest was in full bloom again after about four years. But after the coming of the contractors, the forests have been finished. The contractors in the first instance try to cut maximum number of bamboos from each bamboo clump so that they could earn maximum profit in minimum time. Therefore, they did not even leave minimum number of bamboos which is necessary for regeneration. Secondly no attention was paid in this working of forest to the needs of basket-makers as to from where they will get their raw material. Therefore, when bamboos become unavailable to basket-makers elsewhere, they moved into the forests under the cover of darkness in the night and cut the bamboos left for regeneration, brought them out and earned a living. The bamboo forest was completely destroyed under this triple attack.

9.16 The story of bamboo forests is everywhere the same. One area after another got depleted and destroyed. Wherever some bamboos are still left, restrictions are being imposed on their working and even the small requirements of tribal's daily life are not being allowed to be met on the plea that the bamboos will be finished for good. Therefore, it is now difficult for the tribal people even to fence their fields and mend their broken huts.

9.17 With a view to check over-exploitation of bamboos, the Government has made arrangement for sale of bamboos through depots on no-profit-no-loss basis. But this did not solve the problem, instead his difficulties have increased. Firstly, in this system the tribal has to pay one to two rupees for each bamboo. And then a forest depot cannot be opened in every village. Therefore, one may have to walk 10 to 20 miles for fetching bamboos. On the other hand, bamboo may be supplied from the same forest to the paper mill on payment of a royalty of one to two rupee per ton or 5 paise per bamboo. When the people see this anomaly they become restless. But this anomaly does not appear as anomaly to government, because everything is being done in accordance with rules, and all rules are in order in their respective frames.

#### Fire-Wood

9.18 Similar is the case with fire-wood. When the forests were rich, dead-wood was more than enough for meeting the needs of the people. Now while the area under forests is decreasing, the population has been rising. Therefore, dead-wood could not meet the requirement. Green trees had to be cut even for fire-wood. As forest in the neighbourhood got cleared, distant forests came under pressure. In many areas nothing is left now. In some places women have to walk 10 to 15 kms., through difficult hilly terrain for fetching fire-wood. There is one more thing. The fire-wood in tribal areas is not only used for cooking food but it is necessary for keeping the split bamboo thatched huts warm. Fire-wood is used as a substitute for warm clothing in winter. It is necessary to keep fire-wood burning to save themselves from wild animals and insects during the night.

9.19 Like other outside demands, the demand for firewood also had an adverse effect on the forest and the tribal people. The outside demand increasingly became commercialised. In some areas like Madhya Pradesh the government has assumed the responsibility of supply of fire-wood throughout the State irrespective of the fact whether there was forest in an area or

not. Consequently the pressure on the remaining forests in the State has become quite heavy. On the other hand to the growing demand of firewood of the towns and cities was being met. Through illegal extraction, in which the poor people have also joined because they have no other means of livelihood. In this situation it became necessary to control movement of firewood from the forest. In some cases like some of the ranges in Balaghat district of Madhya Pradesh, the collection of fire-wood was completely stopped. But the irony is that this prohibition has affected mostly the people who are living inside the forest. The formal position in this regard is that restrictions have been imposed because of non-availability of dead-wood. But the local people see with their own eyes stacks after stacks of dead-wood scattered all around. But they are not allowed to take it out. Therefore, the forest dwellers are also obliged to purchase fire-wood from a depot, which is simply not possible for them.

### Basic Dissonance

9.20 It is here that the wrong consequences of the weakness of the tribal due to non-existence of rights in the formal legal system and the strength of the legal entitlement of institutions even not known becomes clear. Tribals see that scores of trucks full with wood are moving out, day and night, towards unknown destinations leaving swirling clouds of dust behind on their kachcha roads. But he is prohibited from bringing wood from the same forest even for making the handle of his plough. There was stacks of dead-wood in the forest, but the tribal cannot touch them even for lighting a fire inside his dilapidated hut during wintry nights so that his half-clad children could at least crouch around it and have some sleep for a while. The formal system understands the logic of restrictions. It also claims them as justifiable. But all these arguments are beyond the understanding of the common man. And it is here that confrontation really begins.

9.21 As we have been observing in all other matters, when the question of any reform is raised, all eyes are set on the mistakes of the poor. Attempts are being made, one after another, to keep a watch on him without paying any attention to the fact whether there was any mistake on his part in the real sense, and even if he was committing a mistake, why was he doing a wrong thing and how that mistake could be corrected? Similar is the situation in the case of nistar. No body paid attention to the question as to how come there was such a great shortage of forest produce that even the nistar needs of the people were not being fully met? On the contrary, it was readily presumed that the forests are dwindling because of non-regulation of the nistar of the people. Therefore, the problem begins with

the perception of the government according to which nistar rights themselves, in a way, stand unrecognised. For the sake of argument it is stated that the nistar can be given to the people only when there are forests. Consequently, protection of forests is the first task. Therefore, if there is a need to make a cut in the nistar rights for this purpose, even that could be justified. In this argument, other pressures on the forests and the real cause of their destruction, are conveniently forgotten.

9.22 In this milieu the nistar rights of the tribals in the forests in course of time became mere concession, which could be given only after taking into account the condition of the forest or could even be refused by the local officers. This is not all. Some calculative persons have gone to the extent of saying that afterall what have the tribal people or those who are living next to the forests, done or what are they doing to deserve special rights. Unfortunately, even the National Commission on Agriculture had viewed the rights of the tribal people in the same frame and following the same argument, pushed the forests in the area of commercial ventures whose worth was to be assessed in terms of simple arithmetic of input-output. This later on led to dire consequences for everyone. It is true that this thinking did not have in practice a significant effect in the field. But in this milieu directions for strict compliance of rules are intermitently issued from the top, the pressure of local officials on the people becomes manifold. Moreover, the net result of all this is that incidence of thefts increases, illegal gratification even in respect of legitimate needs of the people rises and when limits are crossed, finally a situation of direct confrontation arises.

#### New Forest Policy and the Needs of the Local People

9.23 There has been some improvement with regard to the appreciation for the needs of local people in the new forest policy as compared with the earlier policy. It has been accepted in principle in this policy that the needs of the local people should be met first from the forest and only thereafter any other need should be considered. But having conceded such a basic point, two important provisions were added in the policy immediately thereafter. Firstly, the carrying capacity of the forest will be kept in view while making provision for meeting the needs of the local population. Secondly, government depots will be established for supply of nistar articles and all articles will be supplied at reasonable rates.

9.24 Both these elements, which were ostensibly introduced for making the principle operational, appear very simple at the first sight. But in practice, their effect becomes almost like negation of that principle and cast a heavy burden on tribal economy. In the first instance, some important questions in this regard are - who can determine the carrying capacity of the forest area and how will this be done? In this case, initiative will completely pass into the hands of junior officials and the people will become victims of their arbitrary behaviour. Secondly, so far as the arrangement of sale from depots is concerned, a sale depot cannot be opened in every village. Moreover, the supply of bamboos and wood from a depot in practical terms means that the tribal cannot himself cut the bamboos and poles from the forest even for meeting his personal needs. Therefore, the government will have to arrange for extraction of bamboos and poles as also their transportation to the depots.

9.25 This means that the tribal will have to pay the price for bamboos if he wants to get them from the depot. Such an arrangement for outsiders is quite common and natural. But the same becomes a heavy burden for the tribal. According to the government, the rates are fixed after meeting only the charges of extraction and transportation and sometimes even some concession may be given while fixing the sale price. But it is well-known that the cost of government operations is very high. Therefore, even though for the sake of form, the rates are fixed adopting the principle of 'no-loss-no-profit', yet according to such formulations a cart load of fire-wood may be priced at somewhere between Rs. 10 to 20. How can a tribal meet his requirement of fire-wood by paying such a heavy price?

9.26 This practical form of allowing nistar rights from the forests is not correct. Nistar means that the tribal who lives on the periphery of the forest can bring various articles from the forests, according to his need either as a head-load or on a bullock-cart. The arrangement of depots for meeting nistar needs would only mean that what the tribal can otherwise bring from the forest using his own labour, he can get only by cash payment. Added to this will be his labour used for carrying the same for 20 to 25 miles. These anomalies get over-looked in the maze of rules and regulation. The government from its side prepares a beautiful plan for the benefit of the tribal people but somehow the rules may be so framed that they may actually go against the tribal interest.

Basic Difference in the Perceptions of the Tribal People and Government  
in Respect of Forests

9.27 Here the difference in the perceptions of the government and the tribal people about forests comes out clearly. They are completely antipodal. Except for the compulsion of clearing the forests for preparing agricultural land, the tribal uses forest for meeting his minimum needs just like a child feeding from its mother's breasts. That is why the tribal regards forest as his mother. Those forest produce which are important for the tribal people and are the basis of their life, may have no value or little or inconsequential value in the eyes of the government. On the other hand, the tribal may not have much concern about timber or such other items, which the government or the modern system may consider as the main produce of forests.

9.28 If full account of the benefits, which the people really get from the forest, is prepared, the defect in governmental perception would become clear. The benefits, which a tribal receives from a tree after it is planted upto the end when it dries out may be a hundred or even a thousand times compared to the price of its wood, which the government gets in the end after felling it. But since the tribal gets this benefit directly in a natural way, it is not accounted for in our modern economy and thus gets ignored. The modern economy is concerned only with timber and some other useful things from the forest. Therefore, the value of timber gets reflected in its accounting. But wood does not comprise the whole tree. The wood is merely like the bones of the tree after it is dead. There was not much use of these 'bones' in the economy of the tribal so far. However, ever since the possibility of making instant money by cutting a tree has arisen, there is some change in the perception of the tribals as well. Even then, the tribal mostly cuts a tree only under instigation of others; otherwise he has not evinced much interest in the felled tree.

9.29 The modern system has had the same attitude towards environment as well. The outsiders, who have no interest in the continuance of forests, have exploited them indiscriminately for quick profit, and they are still doing so. On the other hand, the tribal, finding no other alternative had to cut the tree only for extinguishing the fire of hunger. No account has been kept anywhere by anyone about the damage done to the environment because of clearing felling of forests or plantation of economically useful trees in place of natural forests. But now environment has reached a precarious

state in the whole world. In many areas, it is difficult for the people to get even pure air and drinking water. After this new realisation about environmental issues, an important place has been given to the effect of the economic activities on environment; they are no longer viewed merely as input-output propositions. The other benefits derived from the trees, which have not been taken into account so far, have also now come to be recognised as worthy of consideration.

9.30 It was in this context that the need for a special law arose for protecting the forest from growing pressure from all sides. The government enacted Forest Conservation Act in 1980. A basic change has come in the management of forest after the enactment of this law. For example, there is a change in the concept about what constitutes a forest. Earlier the plantation of single species like teak, after clearing natural forests, for meeting the needs of outside economy for timber, was accepted as scientific management of forests. But now this type of plantations are not considered as forests. Now forest is taken to mean natural forests comprising all sorts of trees, plants, creepers. This new perception, in a way, is in consonance with the thinking of the tribal people and also serves his interests. His life is really linked with the natural forests. In fact, the way plantations were being established earlier, the very basis of his life was getting weakened. At that time he used to say - 'do not plant teak, it will not allow the tubers to grow'; 'do not plant eucalyptus, even the grass will not grow under it, what will our cattle eat?'; but no body listened. The needs of the tribal did not find a place in the accounts of the department. The Department was concerned only about income which would accrue to them after 100 years, 10 years, or may be this year. Thus this change in concept about forests is not only beneficial for environment but also augers well for the tribal economy.

9.31 But a second change has also come along with the above change, which overlooks the tribal interest. In a bid to convert in accordance with new idea, ordinary forests into full-bloom natural forests a decision has been taken to 'snap completely the relationship between the forest and the tribal people. When there is a discussion about environment, other benefits which accrue to the people from the forest, are ignored. Therefore, with a view to ensure that people may not enter the forest at all and its environment may not get damaged, they are being denied even their ordinary requirements

from the forest. According to this policy, there is prohibition not only in respect of establishing settlements and cultivation of land within the forest area, but there are restrictions even on the entry of people in the forest so that all types of trees, plants and animals can continue and flourish in the forest without any external disturbance whatsoever. It is impossible for the tribal to think of a situation where they cannot enter the forest. In such a situation how they will lead their life? He will have to meet his daily requirements, and his animals will have to continue grazing in the forest. The only difference will be that whatever he was doing legally will be deemed to be illegal. This is nothing new. One more brick would have been added to the demonic structure of criminalization of tribal society in the form of the new law on environment, nothing more.

9.32 The restrictions imposed on account of environment will not make a significant difference for the people living outside the forest. They will meet their requirements somehow or the other. It is possible what they were getting earlier in two paise would now cost them four. If one article is not available from the market, they will make do with another. But these restrictions for the tribal will mean something very unusual. A basic change may become necessary in the every day life of the people. How can a person, who has no links with the market economy, think of purchasing from a depot or market those things which are available in the nearby forest? In the new phase of management of forest addressed to environmental issues, trenches are being dug around and fences are being erected and in some places even electric current is being run through them for the protection of forests so that no human can put his foot inside that area. If this becomes the normal features of forestry management, how will the tribal get the twigs the leaves, the roots, the shoots and all other articles which are of no significance to others? How will animals survive? Similarly, on the plea that axe has destroyed the forest, the tribal is not permitted to enter the area with his axe. Nobody realises that if he faces a wild animal in the forest, what will he do?

9.33 In this way our system operates sometimes at one end of the spectrum and sometimes at the other. But the life of the common man is not divided in separate blocks like the formal system. It has no extreme positions. Life symbolises a wholly mixed situation. So long as these things are not understood and action is not moulded accordingly, the difference in the perceptions of the ordinary tribal and the formal system cannot be removed.

## COMMAND OVER RESOURCES - 3

Reservation of Forests - Habitation, Agricultural Land and Fruit Trees

An important point in the discription given above about the rights of ordinary people on resources and their use is that there has been no change in this respect after independence except that the principle that 'the land should belong to the tiller' was formally accepted. In fact, the process of erosion of rights of the community and the people on the natural resources, which had started during the British period, continued with the same pace even after independence. In some cases, particularly in relation to forests, it became still faster. On one hand, not only there was no attempt for bringing about any reform in the laws concerning forests, they became increasingly more stringent. On the other hand, the forests proved to be an easy source of augmenting the income of State Governments. Therefore, the State Governments firstly further strengthen the management system of the forests and secondly gradually brought under the State's authority all those forests which had remained outside its ambit during the British time.

Reservation of Forests - How much legal?

10.2           The Government had established its authority over the forest under the Indian Forest Act. This law is the foundation of the right of the government over the forests. Eventhough it has become necessary now to examine the basic postulates of the forest laws with reference to premises of our Constitution, at this stage in our discussion we will not raise any doubts about the validity of the law itself. We will examine the position of government forest strictly with reference to the provision of the existing law.

10.3   We have seen earlier that the requisite legal formalities had been observed in the course of reservation of forests during the British period. But the people did not get justice. Most of the tribal people were literally driven out from their forest-homes forcibly. The memory

memory of the forcible eviction of those days now survives only in the folklore of the tribal people. Sometimes they become restless when they see the stone monuments of their ancestors and the big bunds of old fields. But the boundary pillars fixed during those days have been accepted by the people like the line of fate.

10.4 The new political map of our country was drawn after independence in which the entire territory was subdivided into a number of States. The administrative system of the tribal areas, which were incorporated in the new States, was not the same everywhere before independence. Many tribal areas were a part of princely States. The tribal people used to live in forests in a comparatively free state once they had given a token present to the ruler or rendered a variety of customary services. Similarly, a number of tribal areas were a part of Jagirs or Zamindaris whose management systems were quite different. Many tribal areas were part of British provinces. Even the management in these provinces was not uniform. Many tribal areas were placed directly under the Governors. In some cases, special systems were established keeping in view the situation of that area. In some tribal areas only boundaries were drawn, within which the people could lead their life freely, according to their will.

#### Uniform Management - Disregard of Local Custom

10.5 When new States were formed after independence in our country, not much attention was paid to the prevailing systems in tribal areas. Consequently a uniform new system got extended all of a sudden, replacing the old systems in these areas. In pursuance of the principle to adopt a common policy in all States for the management of forests, the process of reservation was taken up wherever the forests were not reserved. Moreover all private forests were also taken under State control throughout the country. The result is that today in almost each and every tribal area there is one law and there is a near uniform management system.

10.6 This uniform system in relation to management of forests on the face of it appears to be right, even necessary, but only from the point of view of managers. A uniform system now stands extended to all the areas. But the life of the people cannot be expected to change merely by a change in law. The condition of people living in these areas, their style of life remain the same as in the past. In the old management systems there was some scope for accommodating the special needs related

to their life style. But there is no such scope in the new system. The people have not been able to accept the new system and the new laws from the core of their heart. Therefore, in many places a state of confrontation has arisen between forest dwellers and the government.

10.7 It will be difficult to describe even in broad terms the varied local customs in a big country like ours in which local customs have always been accorded great importance. The fact there is no reliable information at one place about old management systems. The new system was extended to all the areas unilaterally without any consideration for the local systems without even looking at them. Therefore, full information is not available even at the State level from where all forests are being managed at present. Therefore, even the State Government are not aware about the issues of disputes between the new system and the traditional custom. In this situation, the people continue to place their demands before the government according to their understanding, drawing attention to the special situation prevailing in their areas, giving reference to their old customs. The political leaders and officials on the spot do promise them to solve their difficulties. But those promises remain merely empty words. If at all some action is started on their applications by the Government, they get stucked somewhere or the other in the large system because, by the very nature of issues, there is no scope for them in the law. The end result is that the problem of the people remains as it is and yet another event is added to the long tale of the people. When the Government is unable to resolve the problems and the people do not see any other way for making a living, the trust on government gets discontented and there is a state of confusion about the possible course of action on their part. It is this confusion which results in confrontation and may also take the form of revolt.

#### Reservation of Forests after Independence - How far Legal?

10.8 Let us begin with those cases where the government claims that the forests have been reserved after completing the full procedure according to law. The situation in the field in this regard is somewhat different. The people in many places have one big complaint that they did not get any information in particular about when and how their forest were reserved. Such complaints are comparatively many more in respect of reservations after independence. According to the law, the reservation of forests should be done after listening to the people and talking to them in a real sense. It appears that the formality of the law has been followed

but the intention of the law has not been honoured. Some examples of such formal compliance will prove that the complaints of people are not baseless..

### 1. Reservation in Sonbhadra - A Series of Endless Questions

10.9 About 80% of the area in Sonbhadra district of Uttar Pradesh is covered by forests. Some forests in this district were reserved before independence. But the process of reservation of bulk of the forests was started after independence. The complaint of the ordinary people has been that they did not get correct information with regard to where, how, when and who started the process of reservation. Moreover, wherever this process was actually taken up, it was done in a very rough and ready way in which people did not get an opportunity for telling their side. The people of this area have raised this issue in every forum. But when they did not get relief anywhere they took it to court. Even then the Government continued to ignore it and did not pay any heed to their allegations. It was only when this case reached the Supreme Court it became clear, which was accepted later by the Government, that in the process of reservation of forests even some major procedures were not followed. For example, the boundary marks indicating the proposed demarcation line of the forest land were not shown on the spot. Moreover, the people were not told even through word of mouth about this process, let alone its pronouncement through the beat of drums. The formalities were completed by affixing a written notice. In many villages no officer visited the spot and the process of reservation of forest was completed.

10.10 About 10 lakh hectares of forest land came under the purview of this process of reservation. By the time this case reached the Supreme Court the process of reservation had been completed for some forest areas and final notification had been issued under section 20 of the Forest Act. Thus, some forests had been formally declared as reserved. But the process was not complete in respect of bulk of the forests. The Supreme Court ordered to repeat the entire process in those cases where the process of reservation was not complete, that is, leaving out only the forest area formally declared as reserved. This process is now being redone from the beginning. But one regrettable aspect in this case is that even the Supreme Court in full knowledge of the fact that all the things which were necessary under the law had not been done in all places, stopped at the wall of law and could not give relief to the people in some areas simply because a formal notification of reservation of forests had been

issued. If the process, as given in the law has not been adopted for reservation in some area, the reservation is void. The rights of the people cannot get extinguished by a wrong process. They continue to exist and, therefore, they cannot be ignored.

## 2. Garhchiroli - Reservation without Verification

10.11 While discussing the issue of reservation of forests in Garhchiroli of Maharashtra recently (1989), the local MLAs were surprised to learn that the proposals for reservation of the forests in their area had been sent up and were pending with the Commissioner Nagpur for issuing the final notification under Section 20. When this matter was further discussed the people told me that the forest officers did start some activity some years back. But nobody knew as to what for that action was being taken. And the most surprising thing which came to light was that in some areas no officer ever went and the process was completed. The saving grace was that the officer was honest. He was perhaps following the traditions of British administration - when recorded in his report that area was so remote and difficult that it was impossible for him to go there.

10.12 In this case fortunately the Commissioner stopped the final notification at the request of the local legislators. Thus, the people were spared a big catastrophe. If for some reason, the final notification under Section 20 would have been issued, then even if all these mistakes had come to light they would have no meaning. Like the case of Sonbhadra, in this case also even Supreme Court might have pleaded its helplessness, not to speak of other authorities. The forest officials would have got busy in doing their duties and would have got full liberty to take any action against the people. There would have been only one reply to every complaint and every problem of the people "What can one do, it is a question of law, it is a duty of all to obey it; And after all the law has also been enacted for the good of the people".

## 3. Singhbhum - An Illegal Process

10.13 How the laws of forests can be thrust on the people even when they are illegal and the people can be penalised for them is illustrated by a case of Singhbhum district of Bihar which is noteworthy. Like all other areas in the country, according to the forest department, the people in this district have been cultivating forest land illegally. Cases are instituted against the people for this illegal activity of theirs and they are also convicted. Some people in the district raised a legal objection against this action of the forest department. They said that the

land under their cultivation did not come under the forest. They did not have any knowledge of the process of its reservation, in their view the forest of the area was never reserved. Therefore, these people refused to accept the offense.

10.14 When this case reached the High Court, the Court asked the forest department that if they claimed that agriculture was being done in reserved forest and offense has been committed, can they prove the fact that the people knew that the forest had been reserved? According to the law the last proclamation about reservation of forest has to be done in the local dialect for the information of the people. The forest department was not able to present before the Court a copy of this pronouncement. In view of the fact that no proof could be produced to the effect that the people knew that the forest had been reserved, no offense could be established and the people were discharged.

10.15 This judgement was passed in 1951. The local position about the reservation of forests continues to be the same even now. In this case neither the forest department considered it necessary to give any clarification, nor did they take any action to remove the defect if some omission had remained in the legal process. On the contrary, the forest department has been instituting cases against the people as usually on the premise that the reservation of forest was correct. The people have continued to be prosecuted in the courts and some people have also been getting sentences for the same. However, if some tribal could get help of a pleader, he could get discharged by giving a reference to the 1951 decision. Thus, even though the forest department has not been able to prove even after 40 years that the forests are reserved, still institution of legal action against the people has not been stopped. And the State Government, which has the responsibility for protecting the interests of the tribal people, are perhaps unaware about what is happening in this district. There was perhaps no need to pay any attention to this problem. This is not all. Recently information has been received to the effect that in some quarters a proposal is under consideration to remove the legal obligation of issuing the notification in local languages.

#### Jagirdari Forests

10.16 Another example of reservation of forests is from Maharashtra in which the Government took over the old private forests through one-sided law during the seventies. But a very strange thing happened in

this case. Under the provisions of this law it was presumed, without any local enquiry in the area, that all forests belonging to the Jagirdars, in whatever condition they were, become automatically government forest. The Government, however, in response to the reaction of the owners against this law later decided that up to 12½ hectare land would be returned to them. But both at the stage of deeming the private forests as reserved forests and in the provisions concerning return of land to their owners, any enquiry about the people living there or doing agriculture there was not considered necessary, nor was any care taken about their rights. In reply to the questions raised from their side it is stated that the forest have been returned to those who owned them, how is the Government concerned with other people? The result is that due to operation of this law, even the oldest habitations and cultivation by the tribals in these forests became illegal. That these people had been doing their agriculture in those forests without any objection from any side till then, and that they had been considering those lands as their own generation-after-generation were of no avail, their possession was against the law.

10.17 One thing is clear in this case. Whatever may be the law, the tribals did not get justice. In this case both the law on the basis of which reservation was done and the process adopted for it were wrong. And this is in the know of government. The dispute in Nasik district on this issue came to a pass where firing had to be resorted. The forest officials cannot move in these areas alone. But even then no initiative has been taken from any side to end this basic anomaly. There is a conflict in the area and a state of confrontation. Attempts are being made to deal with it as a law and order situation. But the real issues remain entangled, unseen and misunderstood.

#### Mistakes in the Process of Reservation

10.18 The above examples of the process of reservation of forests are such which appear to be wrong even at the first sight. But if the process of reservation is examined somewhat more closely, the situation will not be very happy. For example, the reservation of forests without drawing actual lines on the spot reported from Sonbhadra is not an exception, similar complaints are everywhere. Secondly, nobody knows how far the people would have got the opportunity for placing their side of the case in the entire process of reservation. It is quite clear from what happened in Garhchiroli or the way private forests, were taken over that there has been almost no attempt to make the people understand in the villages

what was happening when the forest were being reserved. In this situation, wherever people raise doubts about reservation of forests or make complaints about them they cannot be rejected outright and said to be unjustified. The Government records are not fully dependable. The legal formalities no doubt have been complied with. And it is only in that sense that they can be said to be correct. But there is no certainty that everything must have been properly done even at the formal level. The Government has not been able to establish its claim, a number of times in the courts of law.

### Forest Boundaries

10.19 The biggest question in the case of forest is their demarcation. In most of the tribal areas the maps are notional. Moreover, the situation has drastically changed from the time when these maps were prepared. Therefore, the people at numerous places complain that the forest lines are passing through their fields, they are being taken just through the middle of their houses and - baris. What is happening is that the Government departments are taking action on the premise that these notional maps are correct. How is it possible to think of any action on the basis of such maps which are known to be notional, old and in which no corrections have been made according to the field situation? If any such activity is being undertaken, as is happening, it cannot said to be correct with confidence.

10.20 The dispute about maps and record is not only between the people and the forest department. In almost all States there is a big dispute on the question of boundary demarcation between forest department and the revenue department. There are countless cases in which people have pattas of lands assigned to them by revenue department. And these lands are under cultivation. Similarly there are large areas which were given over for bhudan particularly in Bihar and distributed to the landless by Bhudan Boards. But the forest department, on the basis of its maps, asserts that the pattas given by the revenue department and land distribution under Bhudan are illegal. They are taking action to evict the people from these agricultural lands. In this way, if even government departments are not able to settle the matter with regard to the demarcation of the forests the position of the tribal cannot be imagined.

10.21 These disputes about demarcation are continuing for quite sometime - the cases are pending for ten, twenty, forty or even for fifty years and the tribal is in real trouble. But now the forest Conservation Act has provided an added ploy for not clearing these pending issues. Whatever one may tell an officer of the forest department at whatsoever level in these matters, ~~there is generally only one~~ dry answer - 'what to do, this is the law'? But this confusion is not an ordinary matter for the tribal people. The whole mesh of laws and procedures is depriving the people of their means of livelihood, their right to life. This is patently wrong.

#### Habitation - Illegal?

10.22 As I have said earlier in the present system only a written word is accepted as correct. Therefore, in the case of forests, whatever is written in the record of forest department becomes like a line of fate for the tribal. But the question is that how can one be sure that whatever is written in these papers is correct or whatever is not recorded simply does not exist? There are innumerable cases in the whole country where people claim that government papers about forest are wrong. For example, there are thousands of tribal habitations throughout the country where the tribal people have been living from the times of their ancestors yet those habitations are not entered in the records of forest department. Therefore, the forest department in the first instance refuses to accept the existence of these habitations. If somehow they are obliged to explain the factual position in the field, they may take the stand that the huts might have been just set up by the people, so what? They may also assert that those habitations may have been established after the reservation of forests. Therefore, they are illegal. There is no meaning of "people's reality" in the face of such a "legal lie". Therefore, there is no hesitation in removing those habitations.

10.23 The most painful case of this type was from Dhulia district of Maharashtra which I have referred to in my last report. There are numerous such villages where there is not even a trace of forest, there is clear proof for their continuous existence at the same places for not less than 50 years, they have electricity, schools, panchayats. But all these facts are 'unreal' in the perception of the forest department, their record is right and the people are declared as encroachers based on the evidence of that record. The residents of these villages were so much affraid of the forest department that they had to run overnight for their

leaving their homes behind. In this way tribal people living in thousands of villages are completely helpless before the law. Today they cannot prove even their existence, only because the forest officials did not visit that place or even after visiting they did not record anything, their paper is blank.

### Unconstitutionality of Forest Villages

10.24 After reservation of forests only such habitations can continue legally within the forest which may be considered as necessary for its maintenance and development. With a view to ensure that labour force is available regularly according to the requirement, a system was devised during the British period itself. Either existing habitations in the forest were declared as forest villages or people were brought from outside to establish forest villages. The residents of forest villages had to comply with certain conditions specified by the forest department. Each family in a forest village was obliged to provide one or two persons for working in the forest. In some cases the rate of wages and other conditions of work were fixed. On their side the forest department allotted them some land for agriculture. But the lease of the land was only for one year and had to be renewed every year. The tiller of the land did not have permanent rights. This system of forest villages continued even after independence.

10.25 A case of forest villages came up before Kerala High Court during the sixties. The High Court declared the restrictions imposed on the forest villagers under the Hillmen's rules as unconstitutional. After this decision in 1974 the Central Government formally advised the State Governments that in view of the fact that forest villages are against the Constitutional provisions, they should be given the status of revenue villages and full rights should be given to the people over the lands cultivated by them. In pursuance of this recommendation forest villages have been converted into revenue villages in some states like Maharashtra. The process is incomplete in some other States like Madhya Pradesh. But in some States like Orissa and Assam this system continues unchanged. In Assam the village forest not only continue to exist notwithstanding these directions but accordingly to the law each family living in a forest villages is obliged to provide labour for a minimum number of days in a year. As has been stated earlier, this arrangement is unconstitutional. The most surprising thing is that even though this system has been declared as unconstitutional the forest villages still find a place formally in the new forest policy.

10.26 It is necessary to discuss some other points as well about forest villages. Firstly, the people living in these villages do not get benefit of general developmental programmes. A special programme was taken up for the development of forest villages during the Sixth Five Year Plan. But the programme was not continued during the Seventh plan. The forest villages do not get credit facilities from banking institutions in the absence of permanent leases of land. In some States, the forest villagers are now being given 15 year leases. They can now avail of credit facilities, but there is no basic change in the situation.

10.27 There is yet another question which is generally raised in regard to conferral on forest village the status of a revenue village. If these people are given lease of land it is possible that the land may get alienated and the outsiders may intrude in the forest under its cover. It will not be possible for the forest department to have any control on these intruders after revenue villages are established, who can, therefore, indulge in reckless activities. On the other hand it is generally observed that the remote areas are out of reach of the general revenue and developmental administration. Earlier the forest department used to do some developmental works as well in these villages. But this practice has now been discontinued. Therefore, one view is that the people living in forest villages will be denied those benefits which they derived on virtue of forest officers being responsible for management of the forest villages. Therefore, it can be said that continuance of forest villages as forest villages is in the interest of forest villager.

10.28 So far as the residents of forest villages are concerned it hardly matters whether their habitations are managed by the revenue department or forest department. This is a routine question of management and administration. The forest officials can be given some powers under the revenue law on the same lines as they enjoy certain powers of police officers. This will enable them to manage these habitations in accordance with the ordinary law. but the most important question is that forest villagers must get full citizenship rights like all other people in the country. In particular they should have full ownership right over the lands which they have been cultivating. Similarly there should be no restriction whatsoever by virtue of their being residents of a forest village. However stringent regulations can be imposed on transfer of land, these leases may be inheritable but non-alienable.

#### Illegal Cultivation?

10.29 Now if we review the cases of cultivation by the people within

the forest boundaries, which are presumed to exist, the situation is still worse. Ordinarily right of a person on land depends on the period for which he has been in continued occupation. Therefore, the first question is as to how the tribal can prove that he has been cultivating the land for so many years? Whatever has been said about habitations earlier is equally applicable to the land issue. The Government accepts only one evidence in relation to occupation of land and that is its own record. There must be some entry with regard to the concerned land either in the patwari's papers or papers of the forest department. If nothing else is found in the record, there should have been some case registered against the tribal or he may have been fined for the same. These documents are acceptable as evidence. But there is one presumption behind all this argument that the Government officials would have done their duty properly. The department is government personified. Therefore, action must have been taken in accordance with the procedure and law is the first truth of the system. But what can a tribal do if no official of any department may have visited his village or the official may have been satisfied with a big feast and may have decided not to institute a case against him under the law.

10.30 The situation elsewhere is very bad because of this legal complication. The people have been cultivating their lands and making out a living for decades in the reserved forests but they do not have any proof about the same. Therefore, no claim is made out in their favour on that land. That is not all. They are facing legal action against them for eviction. Since the tribal's whole life depends on that land, therefore, he accepts everything; after all the department is the lord. He have to tolerate everything from their side. What will happen with these tillers of land tomorrow, nobody knows. And nobody can say anything about him with confidence.

10.31 A big reason for many agricultural lands being treated as illegal is that while reserving the forest no attention was paid to the fact as to how people have been leading their life in the area. Innumerable tribals are caught in a variety of disputes on this count. Their real situation can be understood only through some examples which are being given below.

### Temporary Cultivation in Forests

10.32 We have seen earlier that many tribal communities are still at pre-agricultural stage like hunting and gathering or are practicing shifting cultivation. This mode of their living was not recognised at the time of reservation of forests. Therefore, their economic activity became illegal. But there are a number of stages between shifting cultivation and settled cultivation. For example, in many hilly areas the land is not so good that it may be cultivated every year. Even in some advanced areas, the people leave their land fallow for a year or two. Therefore, even though a tribal may be cultivating one field in one year, his total agricultural land may be twice or thrice. This practice of his is well known. But when this process of reservation was started or the forests were declared as reserved all of a sudden, at that stage at the most only that land was recorded in his name which he was actually cultivating at that time. The remaining land which was not under cultivation that year was deemed to be forest land. Now when according to his custom he moved on to another field leaving the earlier field fallow and started cultivating it, it was presumed under the law that he has, encroached on the forest land. In this way, for want of clear understanding of the real situation not only the rights of the tribal people were ignored but even legal action was instituted against them. For example a number of cases of this type have been instituted in the Akrani Taluka of Dhulia District in Maharashtra.

10.33 Similarly the tribal usually cultivates undulating lands. But according to the new system of government cultivation is prohibited on more than 15° slopes. Therefore, the people who had been cultivating lands with more than 15° slope before reservation were not given any rights over those lands and their possession was deemed to be unauthorised. It is true that cultivating such lands may not be scientific and may not be in the interest of anybody. But the fact that the tribal was making a living from this land cannot be ignored on that count and he cannot be evicted from the same on the ground that his occupation was illegal. What alternative could be adopted is something which has to be thought by the Government and the people together. There are a large number of cases of this type in Orissa particularly in South Orissa where the occupation of lands which the people have been cultivating through generations, has been declared as illegal. This has led to great dissatisfaction.

10.34 The imposition of '15° rule' uniformly throughout the country is not correct from practical point of view. For example, the best agricultural lands in Bastar district are those in the nala - beds. The tribal trains the nala from its head by making a series of small bunds one after another according to his customs and continues to do so upto a point where it is physically possible. In this form of cultivation, not a single spec of earth is allowed to be eroded. There cannot be a better system of soil conservation than this. But the entire land in a nala-bed may be having more than 15° slope because of which it cannot be given normally for cultivation. In this way, the best agricultural land which may be under most scientific use may be declared to be under unauthorised occupations.

#### Warkas lands of Thane

10.35 Many areas of Thane District in Maharashtra were under Jagirdars. The Jagirdar used to give plain lands for paddy cultivation on a permanent basis. But the undulating lands on the slopes were used for agriculture by the people on the basis of a mutual understanding. Cultivation was done after clearing the forest. They have to pay a fixed amount for each plough to the Jagirdars irrespective of the size of land. Moreover no account was maintained of these lands. This land was known as warkas land. After the abolition of Jagirdari paddy fields were recorded in the name of the people. But the warkas land got left out or was left out knowingly. In view of the fact that this entire land was not recorded in the name of anybody just before the abolition of Jagirdari, it was deemed that the Jagirdar had full rights over the same. In this way not only tribal lost his legal title but even his source of livelihood was in jeopardy. One Jagirdar of Thane received about 40 lacs of rupees as compensation in respect of the land which was acquired for establishing a dairy farm notwithstanding the fact that the land was under the occupation of tribal people as warkas land. On the other hand, the actual cultivators of the land were driven out without any consideration. It is said that in Thane district alone there is more than 1 lakh acres of warkas land on which thousands of tribals subsist. A movement is going on in this district on the issue of warkas land. But no one in Government is even aware about the problem of the warkas land.

#### Dali land of Raigarh

10.36 Similarly the issue of dali lands of Raigarh district in Maharashtra is also very complicated. In this hilly region there are extensive lands

which cannot be cultivated every year. Therefore, there is a practice of rotational agriculture. The same field may be cultivated after 10 years or 20 years and may be kept fallow for the rest of the period. The Government has recognised this practice of agriculture for 100 years or more. In a number of villages in Western Ghats, the people were given sanads for dali lands, according to which all the people in the village were entitled to cultivate that land collectively.

10.37 These people are cultivating these lands even to this today. But there is no mention about dali lands in the present law. Therefore, these people have got in trouble. They are approaching everyone but to no avail. In some cases they are paying their dues to the revenue department and in some to the forest department. In some cases the government departments are not interfering in their continued occupation but in some cases they are being evicted and the forest department is raising plantations on those lands. In some cases they are being warned not to do agriculture in future. The situation in this regard has remained unchanged even after I drew the attention of the State Government more than two years back. Recently when I visited this area (1989), the Divisional Forest Official of Raigarh assured the people that no action will be taken against them in respect of dali lands and lands will continue with them. But the question is not that of the promise by one official, it is a matter of law. Therefore what will happen with regard to these lands is totally uncertain.

#### Lands Allotted for Green Manuring in Karnataka

10.38 The people in the Western Ghats in Karnataka traditionally use green manure for their cultivation. They bring green leaves from the forest for this. This practice was formally recognised earlier. Therefore for every acre of paddy fields allotted to the people about 4 to 5 or even 8 to 10 acres of forest land was also assigned from which they could bring green leaves. After the enforcement of the new law, the paddy fields now belong to the people. But there is no clarity about their rights over the lands which were leased out to them for green manure. In some cases the stronger people have cleared these forest areas and established big plantations of beetle nuts and coffee. But where the people are weak, they are not able to get even green manure for their fields. In this state of ambivalence, the number of trees is going down and their growth is not good because of which both environment and the people's own economy are suffering.

### Old Cultivation in the Forests of Adilabad

10.39 A very distressing example of ignoring the right of the people is from Adilabad. The situation in this district even before independence became so bad on the issue of cultivation in forest area that the original Gond inhabitants of the district rebelled against the Nizam. The Nizam took initiative to resolve this dispute soon thereafter. It was accordingly decided to give regular leases of these land under cultivation. In pursuance of this agreement, a number of people got plain paper receipts in the first stage which confirmed their occupation. These papers are known as "Heimandrof pattas" because it was Heimandrof, the then Advisor of the Nizam on tribal affairs, who had resolved this issue. It is said that all the records of that time, including these cases, got destroyed in the Police Action of 1948 or were knowingly destroyed under that cover. Some big people took full advantage of this situation. These people wanted only to clear the forest in the name of tribal leases, or otherwise, and made crore of rupees. But the cases of cultivators got stucked in the absence of records and remain entangled even after 40 years. The plain paper receipts were not recognised and their rights got caught in the legal web. I am happy that recently a young Sub-Collector settled some of these cases. But he had to face the wrath of those who have, in the intervening period, occupied illegally the tribal lands.

10.40 A great loss to the forests in Adilabad due to this tangle has been on account of the fact that the root cause of the conflict between the forest department and the people continued. This has been responsible for growing tension in the area. Whatever may be the law in this regard, the case of forest department was weak. The people were in actual possession of these lands since before independence. Therefore, nobody could deny their right over them. But even then since law was against them, action continued to be taken against them. But in all cases in the end action had to be stopped because of lack of solid proof against them. In this whole process the only outcome was the harassment of the people.

10.41 Taking advantage of this confusing situation in Adilabad, many other people took courage to enter the forest and started illegal cultivation on a large scale. Whenever forest department tried to take action against illegal cultivation as such, all the cases - old and new - had to be taken together because it was difficult to make distinction between them. The earlier occupants were always in the forefront with their valid claims while others who did not have any legal or even a moral claim took shelter behind them. The forest department was forced to stop

the entire proceedings in view of the valid claims of earlier occupants.

10.42 The Lambadas of Maharashtra have been coming every year to the forest areas of Maharashtra for grazing their cattle. They used to return every year. But when these people saw the local situation in which the people had illegally occupied forest lands openly, they also thought as to why they should also not bid good bye to their nomadic life and became cultivators. These people also cleared the forests where they used to graze their cattle and prepared agricultural lands. The issue became so big in due course that the forest department could not take any action against them. The result is that today in this area there is not a single person who is landless, everyone has some land which he is occupying legally or illegally.

10.43 That is not all. The extremists have taken advantage of this situation. The extremists have told the people that 'the forest is ours and we have a right to live. Therefore, clear the forest, prepare agricultural fields and live well. The Government has no right to take away our right to life'. In this way they gave expression to the inner urge of the people. Under their banner the people cleared the forest wherever they saw that land was suitable and made agricultural fields. The forest department consider this cultivation as illegal, but the extremists assert it as a right of the people. The forest department is unable to take any action against these people in the face of extremist backing. On the other side, the strongest supporters of the extremists at this time are those people who are illegally occupying forest land. These people know that the day the extremists are not behind them, the forest department will throw them out. In sum, since the justifiable rights of the people remained unheeded. In this area, a variety of other people entered the forest and occupied the lands illegally. Today the situation is that it has become impossible for the forest officials to enter the forest, let alone the question of protecting them and developing them.

#### Jagirdari of Palghat and Private Forests

10.44 A very sad story about the state take over of the forest is from Kerala where a number of areas comprised private forests of Jagirdars. There is a small jagir near Palghat Vadaseri-Mamediyar in which the tribal people have been living for ages. During the Jagirdari days these people had to work for the Jagirdars and thus were leading their simple life. Sometimes there was use of force as well because of which there was even a revolt. But there were some limits on both the sides. The people considered the forest as their home and the Jagirdar was also taken as a fixture

therein like a part of their fate. They used to cultivate the fields of the Jagirdars, collected wood from the forests and sold it in the nearby places. In this way the interests of the Jagirdars and tribals were complementary. The Jagirdars had some income from the forest while people made their living therefrom. The people had no objection to this arrangement. And above all the Jagirdar could be depended upon in case of need and crisis.

10.45 This Jagirdari was also abolished alongwith other Jagirs and its forests come under Government control. In this process the people living therein were completely forgotten simply because there was no record about 'their' rights. The only state action, after the forest came under its control, was to somehow remove the tribal from the forest. During my last visit to this area (1989), when I discussed the question of tribal interest with senior officers, they informed me that there were no restrictions on the traditional use of the forest. But when I spoke to the forest guard on the spot, his opinion was entirely different-the forest belonged to the State how can a tribal enter it? In this way after the abolition of Jagirdari and State take over of the forest after independence no attention has been paid to the rights of these people whose life depends on forests and they are helpless before the authority of the State. They have no hope for justice from any side whatsoever. This whole process is an open violation of the provisions about tribal interests and right to life in our Constitution.

#### Conflicts All-around

10.46 In this way the situation of forest is the same everywhere. There are a number of areas where there is direct confrontation between the government and the people such as Adilabad, Khammam and Sriakulam in Andhra Pradesh, South Bastar in Madhya Pradesh Garhchiroli, Chandrapur and Nasik in Maharashtra and Singhbhum in Bihar. In many areas the forests are now out of effective control of the forest department. The situation everywhere has been deteriorating only because no attention has been paid to the justifiable demands of the people, there have been attempts to superimpose laws unilaterally and the behaviour of the departmental officials has been authoritarian and oppressive. In the end either the people have risen in revolt on their own or the extremist's forces took up their cudgles. It is regretted that no attention has been paid to the basic question of resolving this confrontation. Attempts are being made to deal with them as extremist activities and suppress them through

use of force. If this approach continues neither the forest will be saved nor the problem of the tribal people will be solved. Therefore, it is necessary to make a completely new beginning with regard to the management of the forests.

WILD LIFE AND TRIBAL PEOPLE

We were considering so far the impact on tribal system due to economic pressures of outside system on the resources. The impact of these entitlements on tribal system is deepening. Unfortunately, not much attention has been paid to these ill-effects more over as we have seen earlier there are a variety of non-economic rights over the natural resources. The rights till recently were almost insignificant, but now they are gradually increasing. The two important claims in this regard are the preservation and growth of wild life and protection and improvement of environment. It is necessary to consider them in some depth.

Wild Life

11.2 The law concerning wild life is quite old as measures had been taken for their preservation and growth even before Independence. But there was almost cruel massacre of wild life after Independence because of which the need for special attention for their protection was realised. The law for protection for their protection was realised. The law for protection of wild life was made more stringent and its implementation was sought to be more effective. As it has been happening in all other matters, even here the real culprits remained untouched or their crimes were ignored. It was only the tribal who had to face the brunt of new laws and nobody is prepared to listen him in the name of principles.

11.3 There are a number of reasons for the fast decline of wild life after Independence. Shikar was a hobby of a few persons before Independence in British Provinces and Princely States ; and it was considered as their exclusive preserve. After independence, firstly, like all other areas of administration, there was slackness in administration in respect of protection of wild life as well because of which there was erosion of its authority. Secondly, the practice of personal supervision also disappeared after the abolition of Princely States and Jagirdaris. Thirdly, just as the village community was denied any role in the management of forest, there was no involvement of village community in the matters concerning wild life. Fourthly, the exploitation of forest increased in the wake of development and a network of roads got established

for extraction of forest produce. Big developmental projects were also taken up in the forest areas and new highways were constructed. There was a flood of officers with Jeeps, concerned with new programmes of development and this crowd forced its entry into the forest with gun and search lights.

11.4 Moreover, in the changing times, shikar did not remain merely a hobby but got commercialised and it became an easy way for making money and life of indulgence for the neo-rich innumerable commercial organisations were established who entered into this trade. The result was obvious. The wild life was rather completely exterminated in most places. Even where it has remained it is difficult to protect the animals in spite of stringent laws. For example, there is open theft and large scale smuggling of ivory even now on the trijunction of Karnataka, Tamil Nadu and Kerala, and a number of big armed gangs are operating in it equipped with AK47s. What is surprising is that even a common policy could not be formulated so far by these States to meet the menace of smuggling. If ivory thief crosses border of Karnataka and somehow enters Maharashtra, no offence can be registered against him even when ivory is recovered from him.

### Sanctuaries and National Parks

11.5 There is a need for establishment of Sanctuaries and National Parks for protection of wild life. They are being established throughout the country. The Government ordinarily maintains that there is no need of restrictions on the common working life of the people wherever sanctuaries are established. This is also the law. But a number of restrictions are placed in the field on the people in the name of sanctuaries because of which the people are harassed. In the case of National Parks, there is no provision for removing the people from the core area according to a plan. It is true that there is a provision for invitation of objections and determination of rights of the people under the law before a National Park can be finally established and if the people are to be removed they have to be compensated. But in most cases this law is not being properly followed. Wherever sanctuaries are established, a unilateral declaration is made. There is no question of having a dialogue with the people. The situation is bad in relation to even the National Parks

notwithstanding the legal provisions. The rehabilitation of affected people has been undertaken only in Kanaha National Park of Madhya Pradesh but even that remains incomplete. There is no indication of \similar systematic planning in relation to the National Parks which have been established elsewhere or are in the process of being established. In this way on the one side the people are being forced to move out of their villages and on the other there is no follow-up about its impact on their economic conditions.

11.6 There is no need of thinking about the interest of the people in the perception of the Government because of forests belong to the State and the tribal is an intruder who has no rights. If the Government does not throw him out from there, it is a great favour. I had referred to the case of Indirawati National Park of Madhya Pradesh in my last report in which the area is being managed as National Park for about ten years even before the completion of process and determination of rights of the people. Check posts has been established ; there are restrictions on the movement of the people, bamboos cannot be extracted from forests ; people cannot bring wood for preparing food and for fencing their huts ; and where to sell the minor produce collected by them because the traders cannot enter the area. The economic system has collapsed and they are somehow carrying on. The formal claim of the State is that they can manage the forest the way they like themselves and it is a matter of their choice. I had written in clear terms on this matter that it is unconstitutional but that remained unattended in the Government and no action was taken.

11.7 Similarly, the people of two villages were forcibly evicted from Satpura National Park, also in Madhya Pradesh; and here even a hut was burnt while removing the people. But the Government continues to assert that the village people living in the interior regions of the National Park, were interested in coming out from those areas. They also want to come nearer to civilisation. Thus, wherever any complaint is made, the Government always asserts that no coercion has been used. This is the story of all tribal areas. The Government does not consider its own coercion as version and legal action as illegal. But then how the people who have been living there from ages those who have no other source of livelihood, how can they be removed from their homes and lands without force being used? Will they move out without force being used?

11.8 I would like to repeat once again the Government's unwillingness to discontinue their illegal activities. Not only the Government, changed its attitude even after their attention was drawn but did not consider it necessary to accept their mistakes. Moreover even wrong information has been given to the Parliament. For example, the Minister of State for Environment and Forest told the Rajya Sabha on 10.11.1987 that there were 53 National Parks at the close of sixth Five Year Plan.

11 of these National Parks were stated to be located in Madhya Pradesh. Even today, the number of National Parks established under the law is only two Indirawati National Park and Satpura National Park, which I have referred to above, not only they have been legally established so far as National Parks, but even the formal process after the declared intention of the State to establish a National Park there, has not been started. But the process of forcing the people out from Satpura National Park has been started even burning of their huts has not been considered wrong in that process. When no attention is paid to the law even while giving information to the Parliament at the national level, what else can be expected? Where is the law and where is the Constitution? Is it not clear that the will of the Government is supreme and that is the law that prevails?

#### Chenchus of Andhra Pradesh and Tiger Project

11.9 The worst example of paying no attention to the problems of the people at the time of formation of sanctuaries and National Parks is that Chenchu Reserve of Andhra Pradesh. An area was reserved for Chenchus in 1942 in view of their special condition. The main purpose was that they should continue to live in those forests without interference from outside. This reserve was created initially for 5 years. It was hoped that necessary action may be taken thereafter in keeping with their condition at that time. After Independence, as has happened in all other matters, in the case of Chenchus also it was forgotten that the forest was especially reserved for them. This was not all. Afterwards looking to the small population in this area it was declared a sanctuary for Tigers. Thus, the position was completely reversed. Whereas, earlier the area was especially demarcated for Chenchus so that outsiders would not enter, now the Chenchus themselves are forced to move out this area. I have described how mercilessly the people were removed from the B.R.

Hills after the sanctuary was established. The Chenchu people have only this much to say that they had been living for decades in these areas with tigers and they can continue to live with them as usual. But the Government is not prepared to accept this plea of theirs.

### Nomadic Tribes

11.10 Some other communities besides the forest dwellers have also been affected with the establishment of sanctuaries and National Parks amongst whom the Nomadic Tribes are the main affected groups. For example, the fact that the Gaddis had been grazing sheep and goats in open season since times immemorial in the forest was not kept in view while establishing the Great Himalayan National Park in Himachal Pradesh. The entire economy of Gaddis is getting disrupted because of the checks imposed on their grazing rights after the establishment of National Park. Similarly some communities had been collecting herbal plants from this area.

Restriction have been imposed even on this. In the same way, the Gujjars of Uttar Pradesh and Himachal Pradesh have been earning their livelihood by grazing their cattle moving from one place to another. Their traditional routes are getting close because of the establishment of National Parks. The irony is that on the one hand whereas restrictions are being imposed on the entry of animals without any consideration as to how they will sustain themselves, the gates of these National Parks are thrown open for the cars of rich and affluent people for car rallies. A tiger was killed in the Car Rally in the Corbett National Park two years back. Tourism is necessary for adding colours to the lives of rich people.

And the country would get some money out of it, everything is therefore proper. Even if a tiger gets crushed, it does not matter. After all some sacrifice will have to be made for development. Why to worry about nomadic - If they are not allowed here, they should move to other places. Where they should go and why? There is no need to think and ask these questions.

### Non-legitimate Restrictions on People

11.11 Wherever sanctuaries or National Parks are established, numerous restrictions are imposed. The Wild Life Protection Act itself prohibits killing without permission any wild animal listed in the Schedule. But

after a sanctuary is declared, these provisions are imposed very strictly. The biggest question before people is to protect their life and their crops against wild animals. The loss of life and property for forest dwellers is quite common. Their animals are also eaten away by wild animals occasionally. Earlier they used to adopt some devices for their protection. But after all sorts of restrictions have been imposed, they are helpless. If they do something, law is violated and if they do not do anything, the support of their life is shattered.

### Loss Ignored

11.12 The State Governments have made some rules for compensating the loss due to wild animals. But for one they are not complete, and secondly, like other rules, they are so complex and one-sided that reimbursement of loss is not possible. For example, the compensation for loss of life in different States varies from Rs. 1000 to Rs. 10,000/-. There is provision for treatment of injured in some States only. Usually there is no provision for compensation in this case. If a person gets disabled, it is his luck.

11.13 The situation is similar in respect of loss of animals. The quantum of compensation is Rs. 1000 in some States and Rs. 2000 in others. According to the rules concerning compensation of animals in Maharashtra, the compensation can go upto 75% of the market price of the animal. But the ceiling of compensation in the case of cow and bullock has been kept at Rs. 1000, for buffalo Rs. 1200 and for goat and sheep Rs. 75/-.

11.14 Firstly, it is not understood that if some body incurs a loss because of a Government policy or restriction, why he should not be fully compensated? It also does not happen that someone gets the compensation without moving out of the village. Claiming of compensation itself is a long process. First one will have to preserve the proof of the animals death. Nobody tells how this is to be done. Then a medical certificate is required for this. If all this done, in the end one has to run about from one office to another. The sum total is that in many cases people do not get any compensation and if one is able to get the compensation the expenditure incurred would have been so high that it is like no com-

pensation. I had drawn attention of the Government of Maharashtra in this matter but there has been no response.

11.15 The situation in relation to compensation is bad everywhere. How is it that while a uniform law for the whole country has been enacted for protection of wild life, there has been no consensus even until now with regard to effects of that law on the people ? If a cattle is killed within the boundary of a National Park, no compensation is paid because it is argued that why did animal enter the area ? The correct position is not available even to many Government officials about the boundary of different types, how can the animal keep account of that ? No one thinks of that. Moreover, even if the compensation for loss is fixed, it may not be paid by taking the plea that there is a budget provision.

11.16 The problem of property damage in these areas on account of loss of crops due to depredations by the wild life as thus population increases, is very serious. No attention has been paid. For example, elephants in groups attack habitants, houses and huts and eat away crops even grains are stored carefully. In some areas, even wild pig has been declared a protected animal. The population of pigs even ordinarily increases very fast. After being declared as a protected animal the increase in population of this animal still faster. The result is that it is difficult to protect crops in some areas and there are no rules for compensation for crop damage. In the situation, the only question before the people is how they are survive at all ? Either they continue to protect their life and wealth through illegal method or they must move out from the forest if not today, tomorrow. They have been fighting so far with the animals in the forest. But now the question before them is how they will be able to fight against Human Beasts? Secondly, what will they do when they go out? If they do not get wage labour, they will have no option but to beg. Therefore, they are obliged somehow to pull on in the same place bearing all sorts of troubles.

#### The Real Culprit Still Free

11.17 Thus, a variety of restrictions are being imposed on the life of tribal people after the establishment of Sanctuaries and National Parks. But all the same, there has been no effect on the outsiders who

are the main cause of the destruction of the wild life. Firstly, there is some accommodation somewhere the rules framed for their comforts and even where there are none, they may be created. For example, while attempts are being made to remove the people of the core area of Sariska National Park, there are facilities of a Tourist Centre just in the middle. In this way so far as the well-to-do people are concerned, one hobby of theirs is substituted another. They reach there now as tourists if not as game hunters. And if somehow they reach the forest, many devices are possible. For example, it is said that they establish private residences at a small distance from sanctuaries and do Shikar from there comfortably. There is no one to ask them any questions.

### The Need for Appreciation of Basic Differences in Relationship

11.18 Unfortunately, the big difference in the nature of relationships of the tribal people with the wild life on the one side and the tribal people and other people on the other, their limitations and possibilities have not been taken into account in our law. The wild life for the tribal people is a part of the broad natural system in which he himself is included. Their occasional mutual conflicting roles are also clear. They hunt the animals but on other hand the wild animals destroy their crops and sometimes endanger their life itself. But even there is a balance. He not only accepts their existence, but to him it is a self-evident fact. He has links with them at emotional level as well. Most of the Gond clans names are related to wild animals or wild trees which are sacred to them. In their view, existence of wild animals is as important as that of human beings. It is true that there are customs like 'parad' which was not harmful earlier but it has become incongruous now. A change in these is called for. But the main reason for no change is outside interference because of which a feeling of responsibility has disappeared from the tribal community which goes with the idea that the community is the master in that area.

11.19 In contrast, the relationship of outsiders with wild life is formal. They are not life companions. Either the wild animals are merely a game and an object of amusement or a challenge in a risky play. For some they are a part of their profession or special occupation for some other they are invisible partners in the heritage of nature, a concept based

on their sensitivity at conceptual level. The shikar by outside tourists/ professionals and the fight with wild animals in the struggle of life as indistinguishable part of the nature system are two entirely different things. There is no common thread amongst them. But even then bow and arrows, axe and traps of the tribal and the gun of the outsider have been given the same place in the same section of the Wild Life Act. One wonders why ? Perhaps the law makers must have felt that when with all these artifacts an animal can be killed, why to make it two different sections ?

11.20 But both the writers of the draft of Wild Life Act and our legislators forgot that there is a basic difference between the two. Bow and arrow, spear and sword and traps are necessary accompaniment in struggle of life in the situation of tribal society which accepting co-existence as the basic frame. Gun in the hands of the modern man is the symbol of animal destruction. Tigers antlers and bears could have been finished by bows and arrows or spear and sword ; it has never been the case so far. If a tribal ever killed a tiger by trapping, it would become an immortal story. The story of killing a tiger in Abujhmar area of Bastar is being told and retold for years and years in innumerable ways in innumerable villages in that area. And in the same abujhmar, countless villages were deserted a number of times due to terror of tiger. How many animals were killed by the tiger and how many men, women and children were killed - there is no account. But even in that struggle the tribals could survive.

11.21 But in this view struggle where his trap is illegal, carrying an axe in the forest is an offence, what should do ? How the process of uprooting him by trapping him in traps without strings like this can be said to be just ? The law gives the right of self-defence to everyone. Gun licences are given to men for protection against men. But the instruments through which man has been engaged in the struggle for existence from the very beginning of the human civilisation and use them for protection have been snatched away from his hand. How is he to continue the struggle of life in that primitive stage is the question which nobody wants to touch ? This law takes away the most basic rights of the man that is the right to life, rights of self-defence, right of struggle for life. It is against the spirit of human rights.

## COMMAND OVER RESOURCES - 5

Deterioration and Destruction of Resources

The economic situation of a country broadly depends on the condition of its resources and their utilisation. The pressure on natural resources due to production of physical goods for meeting the requirements of growing population and also many new wants has increased sharply, and is continuing to increase because of which the resources are becoming increasingly scarce; they have also greatly deteriorated and in some case almost finished. The first effect of deterioration and destruction of resources has been on the life of the common man, particularly those poor people who directly depend on them for their living.

12.2 The first adverse effect in the process of deterioration and destruction of natural resources is on the forests. The depletion of forests not only leads to the weakening of the economic base of the people's life, but it also adversely affects his environment. There is a growing concern about this. Even then, since there were no correct estimates about the extent of depletion of forests, the seriousness of the situation was not fully realised for a long time. But after the satellite pictures of the earth became available, correct information about the state of forests also started flowing. Earlier it was believed that about 23% of the geographical area of the country was under forests. It was known that some of these forests were degraded, but there was no exact idea about the exact quantum. According to the latest estimates from satellite pictures only 11% of the geographical area of our country is under forests. Moreover these pictures also reveal that the area under forests is shrinking at a fast rate. It has, therefore, become essential to protect the remaining forests at any cost and also to make an all out effort to increase them.

12.3 A variety of efforts were made in the last decade for improving the condition of environment. A new law was enacted and some programmes

were also taken up for that purpose. But success so far has been rather limited. In some tribal areas these measures have had even an adverse effect. The environment, the law and the policies of government relating to environment are deeply linked with the life of the people. Therefore, any measure for improving environment cannot succeed so long as the basic reasons for its deterioration are not understood and a satisfactory solution is found.

#### Dual Pressure of Growing Population

12.4 The first point in this regard is that on the one hand the tribal population is increasing, as is the case with all other people, but the tribal people have no vocation other than agriculture to support themselves. Moreover programmes of agricultural development in the tribal areas have not recorded significant success so far. The people are still dependent entirely on traditional agriculture. Therefore more land is required for meeting the needs of growing population from traditional agriculture. And the only way which the people can get more land is by clearing the forest and reclaiming the land as they have been doing all through the ages whenever they needed additional land for agriculture.

12.5 But the matter does not end here. The population in areas has increased at a fast rate after independence for many other reasons as well. For example, after the construction of roads and with improvement in the means of transport facilities, migration to the tribal areas has grown phenomenally. There are two reasons for this. Firstly, the population has risen in other areas as well. Secondly, new economic opportunities have grown at a much faster rate in the tribal areas because of their rich natural resources. Therefore people from other areas lured by these opportunities are entering the sparsely populated tribal areas in large numbers. In fact this process has been continuing for centuries. Every where it was the tribal people who first reclaimed the forests and prepared agricultural lands. The stronger people and communities closely followed them as they were attracted by these lands. Then they grabbed those lands somehow or the other. Thus the tribal people were rendered resourceless and as such had to move deeper into the forest. They once more got busy in reclaiming the land for agriculture, and the same story repeated in the new setting.

12.6 So far as agricultural land is concerned this is the process which is continuing, more or less, even now, but with a difference. Now at many places either the forests have been finished or where forest are still

surviving the tribal cannot enter them, and if he enters them and reclaims land it is considered as illegal. Therefore, now when the tribal loses his land he either becomes a landless person or an encroacher in the forest.

12.7 Similarly the change in the tribal areas due to creation of new opportunities, is qualitatively quite different from the earlier process in this regard. First of all, ever since the main objective of management of forests became meeting the demands of the outside economy and increase the government revenue, the fact that the tribal people derive their sustenance from forests was, more or less, forgotten. The only share which the tribal got from forestry activity was his wage. But nobody thought about the fact that the small casual wage which a tribal was earning could not provide fully for his living; nor was any action taken to remove that anomaly. That was not all. The small earnings in the form of wages which the tribal made in the process of exploitation of forests for meeting the wants of outside world, proved to be like cutting the branch on which he himself was sitting. In some cases, forests were just finished in that process. And in some other cases, the new plantations which were created in the name of forestry were of no use to him. In many cases they were simply out of his reach. In all these situations, one thing was clear—the basis of the tribal economy became very weak. In this frame he had no other choice but to reclaim more land for agriculture so that he could make a living. And for this he had to clear the forest. In sum, the income of the government from forests continued to increase in the new system. But in the absence of any consideration about making the tribal a partner in the economic gains, not only the tribal did not receive any benefit from the new system but, on the contrary, the basis of his economy itself got increasingly weakened.

#### Plantations and Forest

12.8 With a view to meeting the exotic demands, plantations of tea, coffee, etc., were set up in many forest areas of our country such as the North-East and the Eastern and Western ghats. In this process, while on the one hand natural forests were cleared for establishing plantations, on the other hand, people from outside were brought in for working on these plantations. The main objective of plantation owners was profit. Therefore as a matter of policy, their effort was to give to the labourers the least possible share from their gross earnings. Even today the condition of tea plantation labourers in the North-East is quite bad compared even to the ordinary labourers elsewhere. They are somehow just making a living. It is unfortunate that in many plantations adequate arrangement have not

been made even for primary education. It appears as if even today the system, as was established during the British rule, continues unchanged which comprises two species of people -- the officers and the labourers. The owners and officers belong to a ruling caste while the labourers are their 'subject' who are provided the bare minimum needs for sheer survival.

12.9 The population of workers in the plantations has been increasing. They have no links with their original places, nor have they any relationship with the local economy outside the gardens. Therefore in the absence of suitable outlet for the growing population, they are obliged to seek shelter of forests outside the gardens. Moreover, the original inhabitant in the area where plantations were set up were also displaced from there. Therefore they were also obliged to clear the forest for making agricultural lands. Since the rights of many of these people were not recorded anywhere, therefore not only have the people been forgotten but even the pressure due to their presence in the forests has gone unnoticed. This process is continuing at a very fast pace around all plantations, old as well as the new.

12.10 It is necessary to discuss yet another aspect concerning tea and coffee estates. At present all activities concerning growing of trees of all types including plantations are quite profitable, as we will discuss in detail later. In this milieu while there is an all out effort to extend the area under old plantations, a number of new plantations are also being set up by encroaching on forest lands. For example, plantations are being set up and extended through illegal occupation of forest lands on a very large scale in Chickmangloor and the neighbouring districts of Karnataka. There is no ceiling on the size of plantations under the law. Therefore people hope that if once they are able to establish a plantation, sooner or later, they are bound to get its legal ownership. And the main issue in the case of plantations, like land, or even more is not that of ownership but of actual possession which enables the occupant to command its produce and make huge profit. If a person is somehow able to retain the possession of an estate, he can keep everyone happy with the income derived from it; and he can also continue the fight for the right over that land/estate upto the highest level which can go on for many many years. There are numerous plantations of this type in Chickmangloor which have caused heavy destruction of forests, a process which is continuing unabated. The area of some of the illegal coffee estates may be as large as two to three thousand acres. But everyone appears to be helpless before the land grabber.

12.11 Kerala has also witnessed destruction of forests on an extensive

scale due to the greed of people, in their bid to become millionnaires overnight by establishing plantations in the forests. Whereas an ordinary tribal clears forest for preparing agricultural land so that he can make a living, the astute middle class people are establishing plantations of tea, coffee, cardium, clove, etc., by trespassing and encroaching the forests. The forests get slowly depleted due to plantations of cardium and clove. These people are able to make huge profit for some time but in the process the entire area gets degraded, about which no one seems to be worried. Thus while forests get heavily damaged in that process, like all other processes, the original inhabitants of these areas, who have been making a living there, are forced to flee from there. These people move to some other area in the forest in search of suitable land for agriculture, which once more results in clearing of forest. Unfortunately full attention of administration has been focussed on not allowing the tribal to clear the forests and make agricultural land. But wherever stronger persons are destroying forests for quick gains, either no one pays any attention to it and if somebody somehow makes a note of it, he is silenced in some way or the other.

#### The Effect of Industries, Displaced Persons and Outside Labourers on Forests

12.12 The situation with regard to impact on forests of industrial activity is also similar. A variety of industrial establishments are being set up which are based on the raw materials available in the tribal areas and big projects are being established for exploitation of their mineral wealth. But there is no place of any significance for the tribal people in this new system. These people are either not ready for adopting new occupations or they do not have suitable skills for the same. As we will see later, the government even does not know the extent of displacement of people because of these new activities. It will be enough to say here that in the first instance the forests are cleared for establishment of big modern projects and thereafter, since there is no place for the displaced in that economy, the original inhabitants are forced to move further into the forest which leads to still further destruction of forests.

12.13 The process of depletion and destruction of forest due to immigration of labourers for new industries established in forest areas and even for the programmes of forestry itself has a multiplier effect, because of which the overall destruction of forests around in the end becomes manifold. The labourers from outside are mostly village people. These people come to these distant places to work in occupations other than agriculture because they have no choice; otherwise their real interest

continues to be in agriculture. Moreover the very fact of land ownership is a great thing for an individual, both socially and psychologically. All people have a longing for having some land which they can call their own. When the outside labourer comes in close contact with the simple people of these forest regions, this longing of theirs for land becomes greed and obsession. The consequences are disastrous for the tribal people. Firstly the outsiders are able to grab the land of local people on one pretext or the other. Secondly they themselves begin to encroach upon the forest in collusion with the local officials who mostly come from their own regions. After they are able to get some agricultural land, they leave the jobs for which they had come originally. In that situation a new set of labourers has to be inducted from outside. In this way the same old cycle starts once again beginning with the arrival of people from outside in search of work, grabbing of tribal or forest land and finally settling down permanently leaving the original work.

12.14 Thus there is a steady flow of migrants from outside in the tribal areas. The tribal people in the process are losing their lands. In this situation, the tribal on his own part is also obliged to clear the forest for preparing land for agriculture wherever it is possible. Thus all types of activities in these areas have the same last effect, that is, clearing of forests. In this whole process unfortunately all activities, just short of the final act of destruction of forests, are considered to be an integral part of development. Nobody even thinks about putting a question mark on that process which is the root cause of destruction. The very same system, on account of whose deprivations the tribal is forced to clear the forests and prepare land for cultivation, does not hesitate in striking mercilessly with another hand the very same helpless person and in awarding the severest punishment after triumphantly adjudging him an offender.

#### Adverse Consequences of Forests Becoming State Property

12.15 The process of establishment of plantations and industries on forest land, which began during the British period is a direct consequence of the perceptions of the British Raj about forests. Land and all natural resources including forests, according to them, were in the nature of property. Therefore, the forests in some cases became private property and in some others state property. Property is valued on two counts. Firstly, property is valuable in itself. Therefore, its owner wants it to grow. Secondly, property can also be a source of income. Therefore, after the forest became state property, the government started managing the forests from its angle so that the forests may survive and flourish and may also

yield income on a continuing basis. Unfortunately, this perspective was very narrow. The interest of the people depending on forests for their living was completely overlooked and even the ordinary uses of forests by the people came to be regarded as irritants. As more and more forests were reserved, as described in detail earlier, the gulf between the forests and the people became still more wide.

12.16 Having acquired absolute control over the forests, the government turned its attention to raising the income. Efforts were made to explore possible markets for the forest produce to ensure that income continues to rise. Sleepers for railways, logs for ships, timber for construction of palatial houses, conditioning them for hot and cold weathers and fabulous furnishing with all sorts of wood items were some of the examples. Besides in the wake of worldwide rising tide of consumerism, the demand for a variety of new commodities like paper, pulp and artificial fibre was also growing which led to indiscriminate exploitation of forests. In the obsession for getting more income, nobody paid much attention to the extent of consequent degradation and destruction of forests. On the contrary, rising income was considered to be a sign of progress for which everything could be sacrificed.

12.17 The greatest damage to forests was done in the name of development of forest. The attention of planners while preparing developmental plans was always on economic returns irrespective of their ostensible formal stands in the public in that regard. Almost everywhere efforts were made to take up plantations of such species, even besides tea, coffee and such like, which were economically useful. Natural forests were cleared indiscriminately for that purpose. Not only the full potential of natural resources was ignored in this process, but nobody even cared to pause and think about their utility for the local people. The coverage under natural forests was thus greatly reduced. Moreover, in their obsession for industrialisation, as a solution to all the problems of the country, industries based on forest produce were given big concessions. No attention was paid and knowingly so, to the fact that what could be considered as the contribution of the economic activity as such, in the input/output profile of these forest-based industries and how much profit would be earned by them simply because the forests produce was being given at throw away prices. In fact, the forest-based industries harvested windfall profits literally by looting the forests in the name of industry. It was this greed which was responsible for proliferation of leases for forest-based industries and the industrialists took full advantage of this situation.

12.18 In their greed to maximise the gains, no one bothered to take necessary measures so as to ensure that the forests on which these industries thrived may also remain and flourish. As forests got depleted in nearby locations of these establishments, they grabbed forests in other areas. They had only one purpose that the industry should run and their profits should rise. The vested interests in the system became so powerful that even establishment of saw mills was taken as an industrial activity. Once the sawing-machine was covered under the term industry, saw-mills became sacred establishments which could not be touched. Therefore, forests continued to be cleared just to ensure that the machines continued to run and the worker behind them remained in job. The logic in this case was like the one followed in the argument such as 'the gallows is there, the hangman is there, therefore there has to be a person for being hanged'. The felling of forests continues even today in Andaman islands on the strength of this argument in the face of full knowledge of the fact that once tropical forests are finished it may take a thousand years for their regeneration, and that too if at all that is possible. Moreover, when one species of trees becomes unavailable to these so-called industries, which may have been yielding high returns, they may start using some other species. The most deplorable situation has arisen in Andhra Pradesh where mango trees have been clear-felled in many forest areas only for keeping the saw-mills running. This had very adverse effect on the nutrition of the tribal people.

12.19 In the same way, many industries have started using a large variety of woods with the advances in technology. For example, in the beginning hard woods were not much in use. But now with the coming of new technology they can also be used by the industry. In this way, the development of transport and advances in technology have both benefitted the industries, but the forests have been destroyed. The paper industry in particular has been responsible for the wanton destruction of forests throughout the country.

12.20 As forests became state property, their traditional relationship with the community was snapped. Therefore, the full responsibility for protection and development of forests fell on an outside system. The method of working of a formal system like administration is entirely different from the way of working of a community. All activities in such a system get routinised. Therefore, not much personal interest can be expected. There is another important thing about management of forests. The results of any system of management in their ordinary can be seen only in the long run. Therefore, no categorical opinion can be formed in the immediate

context whether a management system is good or bad. Secondly, a formal system is usually assessed on the basis of statistics collected for that purpose, which can give quite a different impression than what obtains in the field. That is why, the degradation and destruction of forests was continuing before the satellite imagery became available while the situation according to the figures produced by the department was something quite different.

12.21 In contrast, the community has the benefit of experienced reality. Its experience is spread over ages. Therefore good and bad points of any practice get established through the test of time. But a formal system can ignore all this, it can even deny it. Moreover, whether any action in a formal system is right or wrong, can be determined only within the frame of concerned laws and rules which may have nothing to do with its effects on the real situation.

12.22 There has been a gradual erosion of the sense of responsibility after independence with regard to the use of government property and community resources. Therefore, everyone uses them the way he likes. For example, the easiest way for a long time to help people facing crisis situations of any description and to settle them was to clear the forests and allot agricultural lands. This practice was responsible for large scale clearing of forests after partition for rehabilitation of displaced persons in U.P., M.P. and Maharashtra. Similarly, land has also been provided after clearing of forests for settling people displaced by irrigation and other projects. Occasionally land was excised from forests even for meeting the need of growing agricultural population which was distributed to the landless. In this milieu the political parties also did not see any reason to remain behind others. While some political parties launched 'land grab movements' in some areas, some others gave a call for burning the forests. No other promise could be more valuable just before elections than that of allotment of land. In this way, forests were cleared, agricultural lands were distributed but no special attention was given to the long term solution of the economic problems of the people. Even today the tribal in a state of helplessness looks only at the forests with a ray of hope in his eyes.

12.23 Heavy damage has also been inflicted on the forests after independence in a frenzy of change and experimentation in their management. The jagirdars and zamindars indulged in wanton clearing of their private forests for the fear of government take over of forests at any time and also the uncertainty about the price or compensation which they might receive.

These people were keen to make money somehow or other from the forests which remained with them, for even about their future they were not certain. In this atmosphere of uncertainty, even small farmers converted their assets in cash by felling trees on their holding. On the other side, clever people in tribal areas purchased tribal lands with good tree-stock or even rich forest at throw away prices and got them cleared.

12.24 The pressure of growing urban centres-small and big-on the forests has also been quite heavy. Firstly, the forests were cleared for establishment of habitations or extension of the existing ones. Moreover, all growing townships affect the forests in two ways. Firstly, the demand for fuel-wood increases with growing population. Secondly, urbanisation causes land alienation rendering the indigenous people in these areas resourceless. They do not ordinarily get any place in the new system. In this situation they have nowhere else to look for except the forests. Therefore, they are forced either to clear the forest and prepare agricultural land or collect fire-wood from there for making a living. As the nearby forests disappear, distant forests come under their sway..

#### Transport Facilities and Destruction of Forests

12.25 The construction of roads in the wake of development proved to be the biggest cause of the destruction of forests. While good and still better highways are being constructed ostensible for the development of the area, all sorts of kachcha and pucca roads are being constructed for the economic exploitation of the forests themselves. In either situation the remote forest areas become easily accessible to the outsiders for whom forests are wilderness, fearsome and an easy ground for quick success. These people neither have any emotional attachment with the forests, nor are the forests essential for their interests in the long run or over generations. It is now possible to operate faster and heavier vehicles on roads passing through forests. Therefore, many undesirable elements enter the forests as soon as roads are constructed. These people have direct links with the modern system, they are familiar with its functioning and also know how to get on with the nefarious deeds, notwithstanding stringent laws and rules.

12.26 On the other side the local community has no place in the modern system. They even do not know which of the activities in the forests around them are in accordance with the law and which involve its violation. Their experience is that even many wrong things are being done under the supervision of government itself, may be, in accordance with the rules. This was the case, for example, with plantation of teak, eucalyptus, and such like

after clear felling of natural forests or indiscriminate felling of forests just for meeting the pressing demands of cities. These activities have resulted in almost wholesale destruction of forests in many areas. Therefore, they have no ground for making any suggestion or questioning the actions of outsiders; in any case, they do not have any right to do so. In this situation, construction of roads has led to indiscriminate felling in the forests. The departmental barriers have remained ineffective in stopping illegal movement of forest produce. Today natural forests have survived more or less only in those areas where there are no roads. This clearly proves that the final outcome of development in these areas is depletion and destruction of forests.

#### Effect of Establishment of Forest Development Corporations

12.27 At a time when pressure on forests was gradually mounting, the National Agricultural Commission considered in depth the question of protection and development of forests. Their worry was that the forests were being exploited for raising state revenue but no significant investment was being made for their development. Therefore, they recommended establishment of Forests Development Corporations with a view to attract investment from financial institutions for the development of forests. In this way, it was expected that a new beginning will be made in forestry where plans for their development could be made purely on input-output considerations. However, the issue was not simple. Firstly, the economic plantations proposed by these Corporations were not, in a real sense forests. Secondly, since the operations of these Corporations were wholly commercial, the alienation of the local community became still more pronounced. Therefore, the effect in many areas unfortunately even in this case was just the opposite. Instead of preparing plans for improving degraded forests with higher investments, the State governments purposely handed over good forests to Forest Development Corporations. The objective was to take them out of the constraints of forestry working plans so that the government could raise its income through the Corporation by working them out of turn. So far as the question of mobilising financial resources from banks for forestry was concerned, there was not much success. In many areas extensive natural forests were clear felled for setting up new plantations. But these areas became disoltd after forests were removed, neither new plantations came up nor natural forests were regenerated.

#### Commercialisation of Relationship between Forests and Tribal

12.28 The greatest damage to forests has been caused because of the intentional disregard of the intimate relationship between the forests and the local community and the incessant effort to substitute it by market

relationship. This aspect has not claimed due attention so far. Many of the sensitive officers/managers are aware about the implications. But they are also helpless since they are caught in the rigid mould of formal system. They are obliged to bear with the dissonance in the local situation with all its consequences. The loss due to forest fires is most alarming. The people earlier believed that forests belonged to them. Therefore, the moment fire was noticed, everyone in the village and the neighbourhood rushed and joined hands to extinguish it. The people were vigilant, lest forest fire may break because of somebody's negligence. But now when all relationships are being formalised any appeal to the tradition and informal relationships in relation to a single aspect such as protection of forests against fire is rather incongruous. When people are not allowed to enter the forests even for collecting leaves and flowers, then with what face can the administration seek their assistance in any form for its protection? When some help, if at all, is commanded through coercion, it cannot be effective. After all, if formality has to be observed there are hundred ways to do so without any real contribution.

12.29 It is obvious that no formal system can be effective in protecting forests from fires in an extensive area. The damage to forests is not merely due to accidental fires, but much of it can be traced to carelessness and lack of understanding on the part of the people. For example, burning of dry leaves for picking up 'mahua' and use of fire for decoating sal seeds are also responsible for many forest fires. Whatever may be the reason, here is an unfortunate situation-while the forests are getting destroyed due to fire, the administration has remained satisfied by alluding to some formal reasons such as what can they do in the face of inadequate financial provision for fire protection? Sometimes officers put the blame on the tribal. In any case, irrespective of the extent of the damage to the forests the officers get absolved of their responsibility on one count or the other.

12.30 There are many other ill effects of the lack of partnership of the community in the management of forests. For example, there are many items of forest produce which did not have any commercial use and, therefore, no one bothered about them. But when some new use of commodity is discovered it acquires a price which may rise. In such a situation, traders try to maximise its collection just for making a quick buck. The local community has no control over the market and local collection. Therefore, each individual in the locality wants to maximise his earning with minimum

effort. The outsiders may encourage the tribal even to indulge in some wrong practices and if necessary, they may also stand behind him and give necessary support and protection. By the time the people realise that they had been digging their own grave, the damage would have been done.

12.31 A large variety of medicinal plants are vanishing from forests just because some people are keen on making big profit. Similarly, many useful trees have also disappeared. The destruction of chir forests in the process of collecting turpentine in Uttarakhand is well known. Similarly great damage has been done to sal trees for extracting dihup and gum. It is not surprising if a tribal, who does not understand the long term implications, fells a big sal tree just to pluck a couple of bunches of kosa cocoons, which may perhaps fetch him just 2 rupees in the market. Recently, a commercial firm started purchase of even small aonla fruits found in many forests for preparation of chyavanprash at a high price. The people, instead of taking the trouble of plucking small aonla fruits from tall trees either directly from the ground or by climbing the tree or by adopting some other device, resorted to the easiest course of simply felling the tree. In their anxiety to maximise their collection with as little effort as possible

innumerable aonla trees have been felled in the forests of Garhchiroli and Bastar. In some cases, the aonla tree has disappeared from the forests in a single year. Similarly, because of good price of 'tendu' leaves this year (1989) in many areas of Madhya Pradesh, the 'tendu' trees themselves have been felled, because of which it is feared that production of 'tendu' leaves in the coming years may decline sharply.

12.32 Another sad example of commercialisation and lack of understanding relates to the working of sal forests. Sal is associated with the whole life of an ordinary tribal and also his culture. Every part of sal is valuable to him. The tribal people used to extract the oil from sal seeds in their own way, which however had its own limitations. But the sal seed acquired a commercial value with the new technique of solvent extraction. Since sal seed now fetches good price, people try to collect as much as possible. The entire area under sal trees is now swept and seeds are collected in the form of big heaps. In the process, not even sufficient seeds are left on the ground for regeneration. The 'sal' seeds are decoated by burning them at the place of collection itself. This causes great damage to the forests through fires which is not accounted for anywhere. In sum, even while a formal system may operate ostensibly for the good of the tribal people, while the industry may earn a good profit from its operations, the tribal also earn a bit but the forest may be destroyed. Thus, the

tribal himself does a great damage to his own welfare in the long run. The basic lacuna in the present situation is that individual interest has acquired primacy. The formal system is unable to prevent the loss on that count. In this situation the only way to ensure that the individual interest and the community interest do not clash and they remain in harmony, is to entrust the community with the management of forests. Otherwise, with exclusive reliance on formal checks and market forces destruction of community property is inevitable.

#### Entitlement over Mahua?

12.33 The entitlement of the local people has not been ignored only in the case of reservation of forests. The state and the administration in the face of other powerful interests have ignored it in many other cases as well. An extremely regrettable case of this genre is from Rajasthan which concerns mahua trees. When Jagirs were abolished in Rajasthan, forestry was kept outside the ambit of Jagirs. The main purpose of this exclusion was that in case a jagirdar had raised fruit bearing trees, then it would remain with him. Since mahua is a fruit bearing tree, these trees were also included in that exception. It was forgotten that mahua grows wild and is like many other fruit bearing trees in the forests from which the tribal people derive their subsistence. The Jagirdars continue to have a hold on mahua trees in extensive areas of Rajasthan even now because of a wrong premise about fruit trees in the law. The Jagirdars are imposing a levy on the people for picking mahua from the forests. That is not all. They can even cut these fruit trees without any consideration of its effect on the tribal economy. In a similar fashion, old feudal lords continue to exercise control over fruit bearing trees in forests in Madhya Pradesh and in many other States which is blatantly unjust.

#### The Ill-Effects on Forests due to Backlash of Development on the Tribal People

12.34 Ordinarily it could be expected that as in the case of other people, the dependence of the tribal people on forests would decrease as the pace of their development quickens and to that extent, the direct burden of their needs on the forests would decrease. We have already seen the ill effects of the regional development programmes taken up in the tribal areas as a part of our national development effort. But it is regretted that even programmes taken up specifically for the development of the tribal people in the tribal areas have had adverse effect on the tribal economy because of which the pressure on forest has not decreased but has increased. What has happened is that while preparing programmes of tribal development the socio-economic situation of the tribal people has

not been kept in view. Therefore, to a large extent, the expected benefits did not accrue to the tribal people. Instead in many cases, development has had grave adverse consequences for them.

12.35 The tribal people are in particular facing severe backlash of development on account of big and medium irrigation projects taken up in the tribal areas. The agronomical practices relating to irrigated agriculture and dry agriculture particularly in the tribal areas, are totally different. Irrigated agriculture not only requires mastering of new techniques, but an entirely new way of life. The people do get some benefit in those cases where small irrigation projects are taken up or where very small tanks and irrigation wells are constructed. The main reason is that the pace of change in the case of small schemes is not very fast. It is not as though the tribal people have not been adversely affected in all cases where small irrigation schemes have been taken up. But the damage has not been extensive. There are some benefits as well. But in contrast wherever big and medium irrigation projects are taken, the pace of change is very very fast, all lands in the command of these projects become highly valuable all of a sudden. But all the tribal people are not able to cope up with the change. In this situation they are not able to take advantage of irrigation.

12.36 That is not all. There is yet another adverse effect of big projects. The new opportunities, which are likely to arise from big projects get known in a large area, which attract a large number of people from all over and there is a sudden influx. The saddest example is from Koraput, where a number of big irrigation projects have been taken up. In the first instance these projects caused displacement of some tribal people in the ordinary course. But a much bigger displacement started afterwards when irrigation water became available after the projects were completed. The irony was that the tribal people were forced to leave their homes even in the command areas because they were not able to manage their irrigated lands. In this way, they were adversely affected on both counts. And finding no other alternative, they moved into forests as they have been doing through the ages.

12.37 It is necessary at this stage to state yet another fact. The use of machines associated with agricultural development at the national level has also had a very adverse effect on the tribal areas. It is still continuing. The smaller farmers in the advance areas are surrendering their lands in favour of bigger farmers as their own operations in smaller holdin-

gs are becoming uneconomical. These lands are cultivated by bigger farmers with tractors. In this way big farms are getting established in many areas which is considered as a sign of progress. But many of the smaller farmers in their turn are moving out with cash in hand to the backward areas, particularly to those areas where the most innocent tribal people live. The tribal still has extensive lands in many cases whose value he does not know and which he cannot optimally use when viewed in the context of present day techniques. And these people from advanced areas start grabbing their lands in some case by the use of money power and in others through other devices. The establishment of big farms in the tribal areas after independence is the end product of this process. For example, in Sonbhadra district of UP outsiders have taken advantage of the local situation and established big farms of thousands of acres. Everyone is maintaining a studied silence about the questions as to 'where have the tribal people subsisting on these lands gone?' and, also 'if the same trend continues, where will the tribal people finally go?' The option of the tribal caught in such a situation is quite clear. Preparing new agricultural lands in the forest around for making a living, appears to be his destiny; he is rather helpless in this matter. This is yet another aspect of mechanisation of agriculture in our national economy, whose full brunt is being borne by the tribal people, which has gone unnoticed perhaps on purpose. The truth is that this is not being even mentioned simply because even if it may not effect the vested interests, they should not have even the odium of such inconvenient facts.

#### Degrading Forests, Tottering Economic Base and Choiceless Tribal

12.38 In this way, whatever happens in the forest areas finally has only one end-result both for the forests and the tribal people, that is, the forests get depleted and the basis of tribal life gets eroded. As resources are becoming scarce, the pace of their erosion is becoming faster. As the tribal has no other alternative, he has to use whatever he has more intensively which, in its turn, means still faster depletion of resources.

12.39 There is one more thing. It is natural that the tribal selects better lands in the forest for his agriculture. But as the pressure on forests has grown over the period good lands fit for agriculture are no longer available. Yet so far as the tribal is concerned extension of agriculture is inevitable. Therefore, he cultivates whatever land is available, be it of light texture, undulating or hilly. These lands do not serve for long. The erosion of soil becomes more intense with felling of trees; and the productivity of land is drastically reduced in due course. The

situation in many areas has become so bad that even large fields are unable to provide bare subsistence to the people. On the other hand, even fruits, roots and other minor forest produce are no longer available because of the reduction in the area under forests. The dependence of the tribal on the forests is not kept in view in the modern management practices of forests. Therefore, even if there may be good forests of teak or eucalyptus in an area it may have no use for the tribal people.

12.40 In this situation, the tribal has only two alternatives for making a living. Some of them leave their place and go out for work. These people return only during the agricultural season. Others who do not go out or cannot go out, have to look around locally where the forests are their only support. They collect whatever they get in the forest and somehow make a living through the sale of forest produce in the market. In a number of areas like Jhabua in MP, Pratapgarh in Rajasthan and Kalahandi in Orissa, the main occupation of the people is collection of fuel wood from the nearby forests and its sale in the market. Restrictions can have no effect whatsoever on a person whose concern is somehow to make for the evening meal. After all what is the way out for him? He may die of hunger or get killed by a bullet. In fact, the local officials and also some senior officers understand the state of his helplessness. They do not ordinarily come in his way of eking out a living like this.

12.41 One is filled with a sense of remorse even as one hears what the tribal is forced to do and what devices he uses in a state of utter helplessness in his raw struggle for life. In some areas, his routine is that he cuts wood in the forest across the river in moon-light nights and then somehow brings the bundle to the other shore pushing the same all through the strong current in the dead of the night. In some areas, he prefers the safety of darkness of moonless nights and follows footpaths in the wilderness before he dares to touch the edge of a sleepy town. In some places, he has become a bit more bold; he stops the train in the midst of forests, perches on its roof with bundles of wood and travels in 'style' to the nearby town. In some places, he may have to walk for 3 days or more with bundles of wood hanging on his shoulder before he can unload that burden. He considers himself lucky if, after taking all these risks, he gets rupees three or four for each day of hard work, which for this purpose is twenty four hours long.

12.42 It is not that government officials charged with the responsibility of protection of forests are not aware of these happenings. They know all the tricks which the tribal adopts, but they also aware about

his helplessness. Some of them are on the look out for him. They may also challenge him or intercept him on the way. The matter mostly is settled on payment of small amounts. But if checking is more strict, he somehow tries to flee leaving the bundle aside for fear of jail or physical thrashing -hungry and thirsty, looking around with scared eyes-in search of one more chance to bring yet another bundle of fire wood, from the same very place, following the same very route, hoping against hope, next time he may have a better luck and might escape the vigil of those dreaded 'denizen-s'. But occasionally a limit may be reached. In that situation, he may be forced to raise his axe or take up his bow & arrow in defiance of his living, for quenching the burning fire in his belly. And what could be the result no one knows blood-bath, jail, torture or perhaps an open revolt.

12.43 The clever people in these areas are constantly watching this chain of events. These people understand very well the compulsions of the tribal people and work out stratagems for taking full advantage of that situation. When the tribal brings fuel-wood from the forest he has to sell it at a throw away price. Everyone knows he does not get even due wage of his labour input. If he can earn in this way even today a rupee or two per diem, he would thank his stars. Who is the winner after all in this game is what we have to consider here? The real winners are obviously city-dwellers who get their fuel-wood from forest free without paying even for its transportation in full. The tribal on the other side, carries the cross of theft, faces the risk of jail and beating, rushing with a back-breaking load on his head through the darkness of moonless nights or scorching sun which all together do not yield him even rupees two a day. It is not sufficient, even for a full meal of his family. Therefore he has to work still harder, bring some more wood, and so on. The damage to forests thus becomes manifold. When dead wood is exhausted, he cuts the branches of green trees in the forest or even girdles their stems so that the tree may die and he can legitimately collect the 'real' dead wood from there later sometime.

12.44 The unscrupulous elements take full advantage of this situation. They encouraged him to cut timber trees with lure of larger gain. There are two consequences. Firstly, when the tribal cuts a timber tree gets more money with less effort compared to what he gets by collecting fire-wood. Secondly, he is saved the botheration of dealing with forests officials. The tribal may get rupees ten - instead of two but the criminals may make a neat profit of hundreds or thousands of rupees in such deals. This is not all. When tribal fells a timber tree for making a quick buck, he is ready to take any risk. In this situation, it is the tribal who is

caught and has to undergo jail sentence. The real culprit goes scot free.

12.45 In a number of cases, government officials themselves, in collusion with traders, even fix their share in this nefarious business. And there are no problems since everyone is a gainer. That is not all. When such indiscriminate loot of forests is in vogue, even some of the unemployed youth from the neighbouring towns may join the racket - they carry valuable timber as fuel-wood on their bicycle carriers and earn rupees fifty or hundred per day. Similarly, in many areas charcoal making is being done deep in the forests. Even in this business, the tribal gets barely a couple of rupees while the forest is devastated and some people become millionnaires/multi-millionnaires overnight.-

12.46 Today the situation is that in many areas there is no forest left. For example, the entire area around Udaipur in Rajasthan is totally desolate. Now that there are no trees, the tribal is digging the roots and taking them directly as fuel-wood to the market or makes charcoal and is somehow making a living through its sale. He does not know what will happen after this is also exhausted? In this way, the destruction of forests not only has adverse effect on the environment but the very life-support system of the tribal people themselves has been destroyed.

12.47 When we consider both the internal as well as the external pressures on forest, one thing is clear. Whereas the damage to forest on account of internal pressure of growing population cannot be denied, nowhere in the country the forests have not been destroyed all of a sudden on account of internal pressure; sudden destruction is not possible on this account. The damage to forests because of internal pressure is invariably a long term process. But the nature of external pressure is entirely different. The intensity of such pressure in the limited context of an area can become so large that the forest can get destroyed under its shadow in no time. Nevertheless, such demonic external pressures either are justified in the name of development or may be given the cover of high principles, or they may be just ignored because of vested interests - political or personal. Therefore, whenever there is any talk about destruction of forests the centre of discussion is always one, that is, the tribal. The entire blame is put on him, disregarding everything else. In this milieu, the government is satisfied by placing some more restrictions on him and thinks that it has done its duty - for the protection and also the development of forests.

12.48 Not much purpose has been served by restrictions imposed on the activities of the tribal people - nor can they serve any purpose in future. Whatever the tribal is doing is for meeting his basic needs; they do not comprise even most elementary comforts of modern times. Moreover the most important point in this context is that so long as there is no consonance in the perception of the community and the system, the possibility of any check by the system on the individual is bound to remain negligible. The tribal community is still a living functional entity. Therefore, whatever an individual member of that community is doing has its tacit approval, if not conscious and considered support. Therefore, the checks imposed by the system in the face of such social approval are bound to be ineffective.

12.49 But the saddest part of the story is that the reality of direct and effective relationship between the community and the forest in the area is denied by not working in association with the people, may the very existence of the community itself is thereby ignored. The system perceives the forest as property of the State; therefore the community has nothing to do with it. But the state-ownership of forests can have no meaning unless there is a system of adequate and effective control. Any type of formal control by itself in an extensive and inaccessible region cannot be adequate and effective. A variety of attempts have been made so far to bring the management of forests under the effective control of state and to systematise the same. In this process the official machinery has grown phenomenally. But looking to the extent of forests, even as they are today, this manpower is insignificant. And any further addition to the establishment cannot bring about any qualitative change in the situation.

12.50 The forests, therefore, have become like a public property, which has no caretaker and, if there is one, he is far away from the scene incapable of playing an important role. Therefore, this public property is being used by anyone and everyone the way he likes to serve his personal interest.

12.51 Sometimes, the local community can also behave in an irresponsible way. This can happen for a variety of reasons. In the absence of a clear role of the community, any kind of check on irresponsible behaviour of its individual members is not possible. A very regrettable example of irresponsible action is from Purulia district of West Bengal. In some areas, a sort of 'jungle loot' is on for sometime in a planned manner. The people of a village decide about the date and time for looting a particular piece of forest. All of them then gather at that spot on appointed

time and clear the entire forest. Each one of them cuts as many trees as he can manage and carries away the logs for sale in the open market. No one is bothered about the future or even about those who may happen to be entirely dependent on that forest. Each one in the village, particularly the strong amongst them, get some immediate benefit out of this loot. But in that process the forest is totally destroyed and the life-support of the people depending on them for their living is shattered.

12.52 Even though there are some examples of irresponsible behaviour like this in some areas, it still holds in general that the tribal has a sense of involvement in the forests. Wherever he clears a forest, he does so in state of utter helplessness, that too just for making a bare living. But the attitude of other people is quite different. They indulge in ruthless destruction sometimes in the name of development or just for making quick profit in which the tribal is either completely ignored or he is used as an instrument. The tribal community understands this. But firstly they are overwhelmed by a sense of helplessness because there is no other choice. Secondly, which is most important, how can the community feel responsible if they have no role to play and nobody listens to them. If they take initiation, it may be frustrated or given a wrong turn. For example, in Banswara when the people in a village tried to remove the encroachment of a particular person from land deep in the forest, then they were questioned by the local administration itself as to under what authority they were doing so. 'Are you a DFO?' was the sarcastic poser. When they persisted in their effort, they were declared as Naxals.

12.53 The Chipko Andolan was started in Uttarkhand with the objective of not allowing felling of trees in the Himalayan range. It has been acclaimed through out the world. But inspite of that fact, the government policy of working of forest and its management has not registered any change. In fact, other interests groups proved to be more strong. When people in Banswara, Khammam and Bastar became aware and also got concerned about the bad state of forests in their respective areas and thought of replanting the area for meeting their local requirements, their plantations were formally declared to be encroachments on forest land. And the department went to the extent of felling the trees planted by the people for 'removing that encroachment'. When people in Khammam challenged departmental officers with legal action against them for felling the trees which is prohibited under the law, only then the action initiation for clearing the encroachment by removing "illegal trees" was stopped. This is blasphemous. Yet the action is sought to be rationalised. The plea put forward by the forest

department is that people may plant the trees today, but what is the guarantee that tomorrow they will not stake their claim of ownership on the same land? Therefore, it becomes necessary to fell "illegal trees" for protecting forest land from the people.

12.54 In this way on the one hand, there is almost open loot of forests like uncared public property, but on the other hand, distrust about the local community is so high that their entry in the forest or even planting of trees by them on treeless forest lands is treated as an offence. It is on account of this lack of people's involvement and distrust that the condition of forests is continually deteriorating, the basis of the people's life is becoming increasingly precarious, there is increasing reliance on law and formal management systems for its development which cannot claim much success simply because the basic anomalies have not been removed.

#### Experiments of Partnership of Tribal People

##### (A) Forest Labour Cooperative Societies

12.55 The occupation of forests by the British government was denounced during the freedom struggle and the right of the forest-dwellers on those resources for making a living was unequivocally accepted in principle by the leadership. It was under this basic premise that an important experiment in the management of forests in the form of Forest Labour Cooperative Societies. Such initiatives were taken in many states. But this movement became quite prominent only in Maharashtra and Gujarat. Under this scheme the cooperative societies were given contracts for working of forests. They were given a share of about 20% in the net profit. In the beginning these societies worked with great enthusiasm. A variety of irregularities in the working of forests on account the presence of contractors were also successfully stamped out. The forestry labourers not only got due wages but they also received good bonus. The biggest benefit of this experiment was the rise of local leadership.

12.56 But this ideal system could not continue for long. Firstly, the functioning of societies gradually got routinised. Secondly, these societies acquired an identity of their own as distinct from the tribal labourers. A new class of managers emerged. In this process the main objective of these societies became maximisation of profit. The easiest way for achieving this was to economise on wages. The labourers from Dang in Gujarat, recently (1988) presented to me a number of complaints in the presence of society-managers which included, besides bungling in bonus, the most

regrettable fact of non-payment of minimum wages. There cannot be a worse and more blatant example of alienation of labourers from management.

12.57 Like most other experiments in the country, in this case also the routine of formal processes became primary while the spirit of the scheme got largely ignored. The experiment lost its dynamism. On the other hand, with the decline in the area under forests and greater concern for environment protection, the conventional forestry work which could be assigned to these cooperatives was also gradually reduced. The membership of societies, therefore, became like a privilege, which came to be misused. The biggest adverse consequence was that these institutions lost their moral authority and became dependant on the favour of government.

12.58 On the other hand, after the establishment of Forest Development Corporations, many Corporations started the practice of working of forests directly under their own supervision. According to them, there was some justification for assigning forestry work to cooperatives when the general practice was to work through contractors. But even these Societies, in a way, were functioning like contractors with the only difference that they could claim a share in the profit. When the Corporation itself was to work on its own where was the need for bringing in a contractor of any description whatsoever? The policy about sharing of profit with the Labour Cooperative in Maharashtra has been changed significantly which is against the spirit of the original scheme.

12.59 The important experiment of Forests Labour Cooperative Societies remained circumscribed merely to partnership in working of the forests. The labourers did get some benefits. But the basic idea of partnership in full management of forests remained unattended. If efforts were made to seek partnerships of the local people in the maintenance and development of forests, after the contractors were removed from its working, a relationship of mutual trust and well-being instead of deep distrust, which is prevailing now, would have been engendered between the tribal people and the forest managers, which would have served all interests well.

#### (B) The Arabari Experiment of West Bengal

12.60 A good experiment of partnership between the administration and the people is from West Bengal which is worth mentioning. The local officials decided to protect the forests with the help of local people in Arabari, a village in Midnapur. The officers promised that if the people accept the responsibility of protecting the forest, they will be treated as a partner and will be entitled to a share in the income from that forest. Success in an arrangement based on mutual understanding was natural and

a foregone conclusion. This experiment was extended gradually to other villages and the results have been quite good. The most important aspect of this experiment was that the whole arrangement was informal in which the responsibility was entirely with the local community and no one else, including the village headman or officials, could interfere. The first dispute in this experiment however arose when the forests became ready for working for the first time. There was no written agreement between the people and the administration. There were no formal government orders with regard to this partnership in management and sharing of profit. When I visited this village, a debate was raging between the people and the officials about the interpretation of sharing of profit. The officials informed that they have recommended to the government for allowing one-fifth share to be passed on to the people. But the people felt differently. According to them, real partnership should envisage full equality of both sides in all matters. The local officials were unable to give a satisfactory reply to this simple logic. But they could also not promise anything because they were not confident about government's reaction to a 50% share.

12.61 It is here that the ill effects of the difference in the perceptions of the government and the people and the tendency to treat basic questions concerning the life of the people in purely formal and legal terms, become clear. It is well-known that the protection of forests through a formal system in these areas is not possible. I have already mentioned about the practice of 'jungle loot' earlier in some areas, against which the administration is helpless. It is not at all in a position to protect the forest. The most important question and also the base objective of management of forests is its regeneration and betterment. The income from forestry cannot be assigned even a second place in this scheme; it has to be treated as incidental. If a local community succeeds in protecting the forest in its neighbourhood, in that case even if the entire income goes to the community, the state does not stand to lose. Whatever income is likely to accrue in this case, has become possible only because of initiative of the people. And if the people once realise that forests are a part of their economic system, they will be keen to maintain them and enrich them for all times to come. Yes, one caution, however will be necessary lest vested interests, taking advantage of the local situation, become active and destroy the forest by luring the people to make quick gains, ignoring the long-term interests of the community. If the community is aware that the final decision about the forest is their's, the possibility of such wrong decisions will be quite remote. But in the system today is so complex that the possibility of a person literally cutting the branch

on which he may be sitting, cannot be fully ruled out. But suitable measures can be devised by the administration to meet such contingencies.

12.62 It appeared in the beginning the state government might agree with the principle of equal share for the local community. But according to the Government order of 15-8-89, the share of the people in the profit has been fixed at one-fourth which, in my view, is not fair. Moreover, scheme of partnership in this order has now been given a fully formal frame. Forest Protection Committees have been constituted at the village level. These Committees comprise some member of the village community, a member of the Mandal and an official of the Forest Dept. The formal arrangement, on the face of it, appears to be in order. But it is entirely different in a sense from the earlier informal system. In the earlier system, the full authority, albeit informal, was with the village community, which was respected by the forest officers. The people not only knew this, but had direct experience that it was their own decision in all matters concerning maintenance of forests that was final and nothing could be done without their consent. Their consent was the foundation of the participative management. Now a formal system has replaced this informal system. The decision-making power now vests in a Committee which includes some elements from outside the village community also. It is possible that this Committee may also act wisely and succeed in maintenance and enrichment of forests. But the possibility that the decision of the Committee in the new system could also sometimes go against the wishes of the village community cannot be ruled out. The village community have no right to prevail upon the Committee to accept their decision. In this situation, the village community cannot wield moral pressure on the entire system and this Committee by itself may not succeed in discharging this grave responsibility. In my view, the responsibility of the village community in matters concerning maintenance and development of forests is crucial and this responsibility must be entrusted to the people. This is borne by the 20 years long experience of West Bengal. The Forest Management Committee should be made responsible to the Village Council. Some persons from outside the village could also be included in these Committees, but they should be only advisors and not full members. The village community must realise that the final decision will always be their's and their's alone.

### (C) Social Forestry

12.63 A major programme, with a clear objective of evolving a system for participation of the local community in the management and development of forests resources, was started in the seventies. A distinguishing

feature of this programme was that the ground reality of dependence of people on forests for their day-to-day requirements was accepted. But there is yet another ground reality that if the pressure on forests continues as it is, they will vanish in not so distant a future. And this pressure cannot decrease if alternative arrangements are not made for meeting people's requirements. The programme of Social Forestry was prepared in this background. New plantations and improvement of the degraded forests outside the reserved forests with the help of the people for meeting their day-to-day needs was envisaged in this programme. Thus, it was expected that in due course all the daily needs of the people, such as firewood, bamboo and poles for construction of their dwelling, timber for implements grazing, etc., will be taken care of fully by social forestry. Therefore, there will be no pressure of population on reserved forests after sometime.

12.64 This idea, on the face of it, appears to be quite alright. But it has a deep implication. In the new schema, the management of reserved forests will continue as usual. Therefore one view about the new formulation can be that in future the reserved forests will not be used to meet the requirements of the local people, instead they will be exclusively used to meet the needs of the organised sector. Thus two entirely different arrangements are envisaged in the management of forests in the country—the reserved forests for the modern sector and social forestry for the local community. This decision was not only unfortunate as a principle but was not in order even on practical considerations. A task cannot be taken to have been accomplished merely by formulation of a scheme. But with the coming of social forestry programmes, the management of reserved forests was gradually tightened up. There were increasing restrictions on meeting the needs of the people from them. The people who have been dependant traditionally on the reserved forests for meeting their daily requirements cannot be separated from them, all of a sudden. Therefore, the new arrangement everywhere has led to a state of confrontation on the ground.

12.65 Moreover, even though the formality of associating the people in the social forestry programmes was observed, the reality was quite different. The programmes were executed through local institutions. But a formal Panchayat Samiti is not a synonym of the common man. Therefore, firstly most of the social forestry programmes were not formulated in accordance with the local needs. Secondly, due consideration was not given to the opinion of the people. Lastly, social forestry programmes in many cases was arbitrarily taken up on agricultural and pasture lands without any

consideration for the reaction of the people. Thus, the ordinary people did not develop a close relationship with the social forestry programmes. The result was that as soon as a people encountered any problem on account of social forestry, they even uprooted the plants if they got an opportunity without any regard for the long-term objective and reoccupied the land. Thus, it cannot be claimed that social forestry programme so far has recorded significant success.

12.66 The idea of setting aside the reserved forests exclusively for meeting the requirements of the modern sector has been in the air for the last two decades. But the need for a basic change in the concept about forests themselves has also arisen in the mean time in the context of deteriorating condition of environment. Ever since the British established their control over forests, forestry programme became a synonym of economically useful plantations. Everywhere economically useful trees were planted after clearing rich natural forests. The tribal people have been opposing this policy from the very beginning. The natural forests met all their needs, every plant was valuable to the people. But it was not necessarily valuable to the state. Similarly, the trees which were planted by the government were not only useless for the people, but in some cases they were even harmful. A teak tree has no shade, even grass does not grow under it. The government did not pay any heed to these laments of the tribal. But this point in a way became clear only when the issue of environment came to the fore. The natural forests are vital for environment. Therefore, economic plantations were excluded from the definition of forests in the new forest policy. Similarly earlier the forests were considered as a source of meeting raw material needs of industrial projects. Even forest produce was leased out to industries at highly concessional rate. As we have seen earlier, in many areas this was the main reason for the indiscriminate destruction and degradation of forests. In the new forest policy, it is envisaged that the forest-based industries will meet their requirements from outside the forest area by raising their own plantations. We will discuss this proposition in detail later.

12.67 In the whole thinking about the forest policy, the intimate relationship of the tribal people with the forests was ignored. It is true that fulfilling the needs of the tribal people and their first claim on the forest produce have been incorporated in the new forest policy. But by making the formal system and market relationship as the basis for its operationalisation, the policy has been negated for all practical purposes. Moreover the provisions in the law and the style of administration are quite different in their tenor from the spirit of that policy. They are

becoming increasingly harsh so far as the people are concerned.

12.68 After the enactment of the Forest Conservation Act, 1980, a number of restrictions were imposed all of a sudden on the use of forests by the people. The people could not enter the forests for collecting root and tubers, leaves and fruits even in those areas where forests are rich. Grazing of cattle was totally prohibited. The people say that they cannot even pluck a twig for brushing their teeth. They cannot think of their life without all these things of daily use. The inevitable result in this situation, as I have referred to a number of times, is the same. Corruption flourished and confrontation follows. On the other hand, the few developmental programmes, which were being executed in these areas somehow, were also brought to a sudden halt. In some cases, the irrigation project is ready but it has been stopped because some forest had come under submergence for which no permission was obtained. In some cases, the reservoir is full but the water in it cannot be used because its canal has to pass through a reserved forest. Similarly, approach roads cannot be constructed, electricity lines cannot be laid and even a school for children and a hospital for the sick cannot be constructed because there is no other land except the forest land for these schemes to be executed. The reaction of the people has been very sharp. In the National Conference of Tribal Panchas the then Prime Minister in his speech acceded that as a result of the new policy neither forests have been saved nor the people's difficulty have been resolved, nor plantations have succeeded.

12.69 In sum it is clear that the internal pressure of population is a natural process which has been continuing ever since the beginning of human society. Those communities, which have attained the stage of settled cultivation or have crossed that stage also, can take to other occupations for making a living when their population increases. But the economy of the tribal people has not even reached the stage of settled cultivation in a real sense. They are still living at a pre-agriculture stage of economy in many cases. Therefore, so long as these people do not have any other alternative for making a living (and mere availability of an alternative will not do, they must be prepared for taking up that alternative) they will have no other way out except to extend agriculture in the forests. So far as the pressure of external demands on forests is concerned, in many cases, it does not relate to the basic needs of life. Therefore, it can be drastically reduced. They can even be eliminated altogether. Many of the exotic demands are expressions of vulgar consumerism, which cannot be justified either on considerations of environment or social

values.

12.70 The main issue concerning the development and degradation of the forests today is to work for establishing harmony between environment and the needs of tribal people. If a programme is prepared with a frame of mind which disregards the problems of the tribal people they are facing today, and provide a satisfactory solution, it cannot succeed. The environment can be saved only after the today's needs of the people depending on the resources are fulfilled. A happy future can be created only with the support of the people.

## COMMAND OVER RESOURCES - 6

The Path of Justice about Forests

With a view to understand the present state of confrontation between the tribal people and the government on the issue concerning rights over forests and their uses and to find a satisfactory solution for it, the entire subject will have to be considered in three different contexts - (i) the tribal interest, (ii) national development, and (iii) protection and improvement of environment. Similarly, the whole issue will have to be examined from the perspective of the present law, the Constitutional schema, human rights and social equality. While the discussion about principle is necessary, the most crucial thing is the immediate solution of the present tangle. It should be ensured that these issues do not remain merely a matter of policy-level discussions and once more get stuck in government files. If some practical solution of this tangle in the tribal areas is not found, which may also be acceptable to the people, everything will be finished in this conflict between the people and the State. Neither forests will be saved, nor the opportunity for the tribal people to lead a happy carefree life. Their participation in the national development would remain merely a good wish.

National Interest and Tribal Interest

13.2 So far as the question of national interest and tribal interest is concerned, there cannot be any difference in principle between the two. But even then if there is some difference or conflict between the national interest and tribal interest over the question of right over resources and their use, it will be necessary for us to go into the root cause. Such a situation can arise only when either no attention may have been paid by the new economic system to the due entitlements of those who may have been making a living from these resources, or those resources are no longer in a condition from which the people can fulfil their entitlements. In either situation, the system cannot deny its responsibility - afterall when the system has monopoly rights over these resources how is it that such a situation

has at all come about? There are three possible reasons for this - disorientation in basic principles, errors in planning and defects in implementation of programmes.

13.3 Our present system suffers from all these three defects because of which even though there can be no difference between the national interest and the tribal interest in principle, yet it is quite clear in practice. In fact at this time, the interests of the poor class is not being adequately protected in the system as a whole in our country. But in the tribal areas big injustice is being done to the tribal people regarding their rights over resources on the plea of national interest. For improving this situation, it will be necessary that the perspective is clear and the proposition that in no situation, social justice shall be ignored, must be unequivocally accepted. We will be discussing in details this question later.

#### Protection and Promotion of Environment and the Tribal People

13.4 Now the second question is about the protection and promotion of environment and tribal interests. Is there any conflict between the two or can there be such conflict? One thing is clear about environment that if destruction of environment continues in the present style, the very basis of human life will perish. It is also clear that as pressure on natural resources is increasing, the condition of environment is deteriorating. The first impact of this is on the poor. The basis of their life is getting eroded and crumbling. Its impact, at the regional level particularly in the tribal areas, is increasing at a very fast rate. For example, the situation in the Bhil area spreading over Southern Rajasthan - Western Madhya Pradesh - Eastern Gujarat strip has become so bad that the people in this area are not able to sustain on the local resources even for three months in the year. If immediate action is taken for the protection and improvement of resources of this area, the remaining resources will begin to regenerate and the people will start getting better sustenance from those resources. In this way the first benefit of improvement of environment will go to the poor.

13.5 This statement is unexceptionable in its place. But there are two aspects which must be kept in view. The degradation of environment is adversely affecting the poor people, many of them even do not have sufficient to eat. But on the other side, there is a class of affluent

people in our country, which is no longer very small, which is prospering in a way as if there are no limits. After all it is natural resources which provide the base for fulfilling all sorts of consumer demands. Therefore, a dualistic situation is emerging. On the one hand, on account of degradation and destruction of natural resources, it has become difficult for the people to get even two square meals. But on the other side, all sorts of consumer needs of the affluent sections are being met from those very resources in the name of development. That is not all. An all out effort is being made to provide for this affluent group still more and further more goods because that has been accepted as a synonym of development.

13.6 There is only one reason for this incongruous dualistic situation. The controllers of the present system are managing it in such a way that the better off sections have got full command over these resources and every effort is being made that somehow this command must not only continue but it should become more pervasive. In this way when the command over resources of a handful of persons is increasing, it is natural that other people, who comprised the vast majority, will only have to be content with only limited resources. Inequality has been continuously increasing in our country after the independence. Increasing inequality has only one meaning, that is, consolidation of the stranglehold of the better off sections on the resources and their getting out of reach of the poorer people. The real cause of poverty of the poor is that he has to depend for his living on limited resources. Moreover, their number is increasing. And in the absence of any other means for their livelihood, pressure on the limited resources increases, which lead to the pace of their degradation becoming still faster.

13.7 There is one more thing which needs serious consideration. After all, what are the needs of the poor people? If someone talks about the pressure on resources of the poorer people, then the question is what is the form of that pressure and for what purposes? Is it not just somehow to fill the belly? But after all this is a basic right of not only every man but every living being. Can somebody deny the use of resources for even this purpose? If some way can be found with full understanding of the helplessness of the poor what objection can the poor have to move that way? So long as such a way is not found, he will continue to act according to his understanding. To force him through the use of coercive power into a situation of starvation and

then compel him to search for other alternative is neither justice nor humanity, and nor it be accepted as right administration.

13.8 In contrast what are the better people doing on the other side? What for is their pressure on the environment? They have no worry about food and other subsistence needs. They do not know what hunger is. But they are not satisfied even after their needs for an easy life have been met. They are not out only for more comforts but they are haunted by the greed for non-essential luxuries which has no limits. The rich people in our country are absorbed in copying the West. They are not even aware of the fact that these countries had established their stranglehold first on the resources of the whole world and then made reckless use of the resources which became the foundation of consumerism. Our elite is following the same style in its indulgence and indiscriminate use of the natural resources. But its consequences have to be borne by the ordinary citizens of our own country and not by some other country, as was and is the situation in the West.

13.9 This is a bitter truth that the main reason of depletion of our resources is increasing inequity and rising consumerism. But unfortunately when the question of protection and betterment of environment is raised there is not even a reference anywhere about this destructive consumerism. Instead, all advice is reserved for the poor, who is somehow eking a living for himself. All sorts of restrictions are imposed on the poor. The irony is that the talk about environment throughout the world and also in our country is being done by the elite groups, and they are the only people who can afford to do so. In fact these people show their deep concern about the survival of the human society. But the truth is that their immediate concern today is that somehow their super-comforts should continue, and the level of their comforts should further rise so that they may not have to cut a sorry figure in rat race for comforts with their likes in other countries. On the other side, the poor has only one thing weighing heavily on his mind - how to manage one meal a day if not two. For him that is every thing his God, his religion and if may term so his environment. It cannot be expected from a hungry person that he would forget about today and would think of what would happen after one hundred years, ten years or even one year. His worry is for the day and he would do whatever

he can for improvising for today's needs. The concern about the 'morrow' to him is meaningless.

13.10 The destiny (which in the world-view of the poor is another form of the system itself) has snatched away the future of the poor. Therefore, there is no word for future in the vocabulary of the poor. He lives in the present. Now what should he do if his present is also being snatched away? Has he no right to protect even the flimsy remnants of what is now life for him? In such a situation there is nothing which can be considered as 'not done' or prohibited. As it is said, what crime can the hungry person not do?

### Consumerism - the Real Enemy of Environment

13.11 The most important measure for which is need as the protection and betterment of environment is imposition of an effective check on consumerism and equity in relation to entitlements over natural resources. If the poor get due entitlement over the natural resources, they will be able to meet their requirements of the day. When his problem of the day is solved, he will sit in the evening free from the instant worries and then will be able to ponder over the ways to ensure that the needs of next generations should continue to be met like theirs. If he realises in that state of equanimity that the interest of the next generations is being jeopardised, that will become his concern, a matter of worry. And he will be obliged to think of necessary improvements. It is only that the poor struggling with the problems of the day will get converted into the greatest supporter of environment.

13.12 The poor man, particularly the tribal, is intimately linked with the nature. He knows fully well the impact of his own doings on the environment. The shifting cultivators of Nagaland and Mizoram have now to return to the same Jhum field in the hills after barely three to four years. They are seeing that produce from the fields have declined. They are also conscious that if the things continue as they are nothing except pebbles would remain in their fields. And they will not get anything by way of crops from them. But they are helpless in this situation in which they are trapped, they have no choice. If he

could find a way, there is no reason why he would not follow the same.

13.13 The situation of the well-to-do people is entirely different. They have no direct relationship with the nature or its resources. Their entitlement is through the entitlement of the system. They are not aware as individuals about the impact on natural resources of their collective entitlements and uses. If at all, they have some realisation it is in an abstract form at the level of principles. Therefore, there is no need in his world-view for compatibility between personal interest and the common interest. He can explain away his own wrong ways of personal life by saying that if the state does not consider it right, let there be a legal prohibition; he is prepared to obey the law. But so long as that style of consumption is formally permissible, if everyone in the world is using the scarce resources and enjoying why should he deprive himself of that privilege?

13.14 In this situation full of contradictions environment is being destroyed for meeting those wants of the well-to-do people which are not necessary for life, they are all artificial requirements. Can the interest of environment be put at stake for meeting artificial wants? The reply is a clear "No". Therefore, there should be immediate prohibition on all such unnecessary uses. It is on account of this destructive consumerism that the environment of our country has reached a precarious stage. For protecting our environment, it is now a must that the level of ordinary consumption is clearly defined keeping in view the resources of our country. Moreover, it will also be necessary to determine that which forms of consumption are environmentally destructive and socially unjust. If unnecessary consumption is brought under stringent control, it would relieve the pressure from resource and also give some relief to the poor. I hope that there will be a serious discussion on this issue at the national level so that the minimum needs of the poor are not sacrificed at the altar of rising consumerism in the name of development and the natural resources which are the common heritage of all citizens are put to any other use only after meeting the minimum needs of the day of all citizens. It must also be kept in view that in the blind race of consumerism today, the rights of the coming generation are not compromised.

### Rights, Needs and the Law

13.15 Having considered the broader issue of environment, we will now consider the possibility of defining compatible relationship between the forest and the tribal people. In the search of a viable alternative, we will have to begin with the question of legal frame governing the forests and the related issues of Constitutional rights and the right to life of the people. We have seen earlier that firstly in many cases people are not getting their due even in accordance with the provisions of present law. Secondly, in some cases new laws have been wrongly enforced because of which the legitimate rights of the people are deemed to have been extinguished. Thirdly, there are some areas where, in the absence of any alternative, the people are obliged to break the law just for making a living. But the most regrettable thing is that the most of the tribal people are fighting for enforcement of the present law in its true spirit. No attention is being paid to their justifiable demands, no one listens to their complaints. Therefore, when there is no other way, a state of confrontation ensues.

13.16 I recently (1989) visited Garhchiroli. I was going in a jeep. I met a tribal on the way whom I gave lift in the jeep. In the course of conversation with him about the Naxals, whom the people here call Dada, I asked him 'how are the Dadas?' He said 'there is atleast one change after the coming of dadas - the government atrocities are over, now the police or the guard cannot harass us.'

13.17 Can there be a greater irony? What a shameful situation are we in, where the administration, on which rests the responsibility of protection of the people in tribal areas, should be considered as the biggest burden and instrument of oppression. And the people should get relief against these representatives of the law from such people whom the legitimate system calls offenders and for eliminating whom it is using its full power. Almost everywhere confrontation begins on the question of management of forest. The administration has been taking stringent measures for its protection. But today the question of forest has been pushed to one side and the confrontation between the people and the State has become the central issue. So far as the question of forest is concerned it is not possible for the forest officials even to enter the forest, not to speak of their effective control. The extremists are in command and the tribal is having a feeling of freedom under their long shadow.

13.18 One another thing is also clear about the situation of the forests and the tribal, that is, the situation is quite different in every State, and even in every tribal area. Therefore, these problems cannot be resolved on the basis of directions from the level of the State or the Central government. The problems of a particular area can be resolved only at that level with understanding and good will. It will be necessary to formulate some basic principles which, however, can be made only at the national level. Or otherwise, the local issues will get entangled in the laws and the procedures of the system. There will be no improvement in the situation notwithstanding declaration of principles as have been the case so far. Instead, the situation will not only continue to deteriorate as it is but will deteriorate at a much faster rate. One has not to search for these examples, it is before everyone as an experienced reality.

13.19 So far as the question of basic principles about forests is concerned the first issue concerns environment which we have discussed above. The tribal people are appreciative of environmental needs. In fact his entire life is dependent on preservation of environment. It is a different matter he may not formally know what environment means. But unfortunately the high ups who talk about environment have no understanding about the tribals life. It is the life of the tribal people which can become the foundation for protection of the environment, and nothing else. A beginning has to be made there.

13.20 Now the second question is about the law. A number of rules have been framed under the law. The law of 1980 for conservation of forests has become like the line of fate for the tribal areas. Under this law the forest land cannot be used for any purpose other than forestry. The term of 'forest land' under this law includes those lands where forest exists and also those lands which are under the administrative control of the Forest Department. This is well-known that more than half of the forest land is such on which either there is no tree cover and if there is some forest at all, it is degraded.

13.21 The forests are the foundation of tribal life. This relationship break interrupted even after the forests were reserved. We have

seen that when the British started reservation of forests in the last Century the original inhabitants of the area were driven out either forcibly or through allurements. This was a case of sheer injustice to them. Attempts have been made after Independence to end all types of injustice of the British days. That is not all. Our Constitution makers were worried even about the rulers and princes, the members of the steel frame of the British Raj should not lest injustice is done to them. Constitutional protection was, therefore, provided not only for their justifiable but even unjustifiable privileges which had to be removed later on. In this context, it cannot but be described as a misfortune that no attention was paid to the gross injustice perpetrated during the British period on the most innocent and simple people residing in about one-fifth of the geographical area of our country. Zamindari have been abolished, Jagirdaris have been abolished but the authority of the government on the forests just remained unchanged notwithstanding the fact that these forests were forcibly taken over by the state, and that the tribal people have been subsisting on them for ages. No one even looked at what was happening in these 'governmental Zamindaris'. Only some forest area in the North East were left out from these governmental Zamindaris, over which the people had retained their right. The management of these forest was entrusted with the community under the Sixth Schedule of the Constitution.

13.22 A comprehensive frame has been provided in our Constitution for ensuring that there is no injustice against the tribal people and their interests are protected. There was deep concern about equity for the tribal people in all declared policies of the Government after the enforcement of the Constitution. Moreover, the responsibility of protecting the tribal people was entrusted to the Governor under the Constitution and he was given unlimited powers for discharging the assigned duties. Unfortunately the Governors also did not discharge their responsibilities, they did not use their powers and the injustice to the tribal people with regard to the matters concerning forests continued. That was not all. The laws for the management of forests were made more stringent because of which the injustice of the system became more pronounced and a state of confrontation has arisen all around in the tribal areas.

### Right to Life, Forest Laws and their Constitutional Status

13.23 The right to life of a citizen is the most basic right in our Constitution and in our democratic polity. The life of tribal people is deeply linked with forests. There is no life for them without forests. Therefore, when they state this fact about their life and urge that their traditional relationship with the forests should be allowed to continue, they are not telling about a new right. These people do not have in the view any agreements like those of the paper mills and contractors on the basis of which these new lords can afford to behave as if they have licence for clearing the forest and as soon as they feel that their interests are hit, they seek relief from the courts, sometimes in the name of rights sometimes in the name of investment, and sometimes in the name of even their employees. Every one knows about their hypocrisy, but still they continue to enjoy the licence for destroying the forests.

13.24 In contrast, when the tribal people speak about their relationship with the forests through ages no attention is paid. In fact, they may be asked to produce a proof to substantiate their claims. Does the relationship of the tribal with the forest require any proof to be established? Is it not an irony that a paper which is required even for establishing this relationship a paper is required, witnesses are required? The paper and witnesses are a part of the new system. His existence is self-evident. Therefore, from where should he bring that proof which does not exist in 'his system'?

13.25 The present forest laws are against the right to life of the tribal people. It is true that these laws are not new. But these laws did not mean much in practical terms before independence, as the tribal people generally lived in inaccessible areas, outside the effective limits of administration. But as the hold of administration became pervasive and got gradually extended to the remoter areas as well after independence, the real terrible face of these laws appeared before the people in an increasingly clearer form. This face of administration is just the opposite of the democratic spirit.

13.26 But such a dissonance in the operation of the system was not surprising. The older system was colonial in character, in which the fights of the people were not of much importance. And it was precisely this type of dissonance for whose removal the executive was given extensive powers under the Constitution. If action would have been taken in accordance with the spirit of the Constitution, these dissonances could have been removed without waiting for even a single day. The removal of such dissonances is a basic right of the tribal people, which has been ignored so far. The most important reason for this has been that the executive, which has been given the responsibility of protection of the tribal people did not discharge this responsibility. Therefore, an important question arises here whether the present situation can be said to be equitable the system does not discharge its responsibility and as a consequence thereof the rights of the tribal people get extinguished. This is a basic dissonance which cannot be justified.

13.27 The traditional dependence of the tribal people on the forest for their life is a human right. This right is self-evident and self-created which can neither be circumscribed nor made by conditional mere definitions and provisions of any law. In fact, even the Constitution cannot circumscribe this right nor can it make the same conditional. Fortunately, our Constitution has given full recognition to these rights without any limitation. Therefore, if today any law comes in the way of this basic human right, then that law is unconstitutional.

13.28 The Forest Conservation Act is a notable example of the conflict between interest of the tribal people and the law. In the National Convention of Tribal Panchas (1989) only one issue reverberated the Conference hall throughout. It is difficult to live after the enforcement of Forest Conservation Act let alone be the question of development. For villages located in forests a school cannot be constructed nor a hospital can be established, a road cannot be laid, irrigation channel cannot pass through and last but not the least if there is scarcity no relief can be started for providing the work to the starving - all because any land designated as reserved forest cannot be used for these purposes. The need for such a stringent law arose because the forests

are disappearing and it is necessary to save them. But the real dacoits of forests are mercilessly destroying it openly with A.K.-47s in their hands. The system is helpless before them or knowingly turns its eyes from their side. But all sins of all perpetrators, in the end, strike with full force only one - that is the tribals, and his right to life.

13.29 This dissonance is so clear that the former Prime Minister himself accepted it in the open session. A high level Committee was constituted to remove this dissonance. But that Committee got entangled in high principles and could not even present its report. On the other side, the simple questions about his life posed by the tribal Panchas from all over the country in the Grand Hall of Vigyan Bhawan are swirling around - hither and thither - seeking their answers - all in vain.

#### Hesitation in Fulfilment of Constitutional Responsibility

13.30 The Government of Maharashtra recently took a notable initiative to remove this legal dissonance. In the opinion of the State Government this law was against the interest of the tribal people. Therefore, the State Government decided to amend the provision in its application to the scheduled areas in the State using the powers conferred on the Governor by the Fifth Schedule of the Constitution. But the voice of the forest dwellers and their side are unfortunately so weak that the State Government hesitated in using the powers of the Governor under Constitution even to remove such a gross inequity. Lest the State Government does something which may not be liked by the system they decided to seek the opinion of the Central Government. That was not all. There was a greater surprise in store. The Central Government which has the highest and the final responsibility for protecting the tribal people persuaded the State Government not to use these powers. If the Central Government, while giving its advice, had also done something which would have solved the problem of the tribal people because of which the use of special powers were contemplated, it would have been something understandable. But the tribal is still groaning under the pounding of that law even now, notwithstanding the declaration by the former Prime Minister at the Centre and the decision of the Governor to use his powers at the state level for giving him the necessary relief, who knows which is supreme - System, Constitution or Human Rights? But it is clear that the Forest Laws in the present context of the tribal areas are unconstitutional. Therefore, a new

law is necessary for ending the anomalies of the tribal area in which the right to life of the tribal people depending traditionally on the forest is accepted as of equal weight if not heavier compared to the so called environmental and the national interests.

### Interim Action

13.31 While accepting the fact of the forest laws being not in consonance with the spirit of the Constitution, it cannot be said how soon and to what extent changes can be brought about so that these anomalies can be completely removed. The vested interests will oppose any change, sometimes under the cover of principles, sometimes in the name of national interest and sometimes by raising the question of practicality. Even my conclusion is that the laws are not in consonance with the spirit of the Constitution may be dubbed as an expression of emotion and idealism, the best play for non-action and the anomalies may remain as they are. Therefore, it is necessary that we consider whether something can be done within the ambit of this "anomalous law" itself and whether the administration can make such programmes which may provide some relief to the people. There are three questions in this regard, namely, forest, land, minor forest produce and management of forests on which immediate and extensive discussion followed by decisive action based thereon are necessary. We will start our discussion with the management of forests.

### Management of Forests

13.32 The life of the tribal is linked with forests. Therefore, if there is anyone who not only has the greatest interest but also deep emotional attachment with the continuing existence of forests and their progressive enrichment, it is the ordinary tribal. Therefore, the tribal community should not only have partnership in the management of various forests but should have full authority with regard to their management.

However, one point will have to be kept in view here. It is possible in the present situation that the ordinary tribal may not be able to understand the mores of the outside people and may damage his own interest under their deceptive advice. It is also possible that some shrewd persons within their own community may themselves mislead the ordinary people of the village to serve their selfish ends. Some of these causes are responsible for the destruction of forest in many areas of the North-East. Therefore, in principle there are two different facets of the role of the local community in the management of forests for which different provisions will have to be made. Firstly, the village community should be completely autonomous with regard to the internal relationship of the community and their rights over the forest. There should be no external control or even interference whatsoever on this count. The relations of the village community with the outside world also can be of two types. Firstly, the right of the people of a village to protect their resources and not to allow them to be exploited for use outside should be considered as basic. No one can have better knowledge about this matter, nor can anyone be more concerned on this count. Therefore, nobody should have any authority to change their decisions in these matters. This is also the message of the famous Chipco Movement in our country.

13.33 Another situation is also possible in this case. The village people can themselves decide to give away their resources just for making some immediate gain. Such a decision will be against the long-term interests of the community. Some restrictions can be placed in respect of such decisions. But caution will have to be exercised that no decision should be imposed unilaterally. The people should be partners in the process of decision-making. In this arrangement, the people will be able to understand the ways of functioning of the outside world and in due course will themselves be in a position to take decisions on their own on the basis of their own understanding.

13.34 In the end, there is a third possibility as well. The vested interest within the community, in collusion with Government officials and outside elements, may do something which may destroy the forest. Any legal or procedural checks are not possible against such eventualities. Today when the control is fully with the Government, even then protection of forests is not really possible. There cannot be a better check against wrong action than the partnership of the people themselves. The biggest merit in people's participation is that they will be able to recognise the relationship between the cause and effect tomorrow, if not today. In this way after they know the mistake there is possibility of correcting it. As people's understanding of the outside world grows, they will be able to keep a check on those wrong elements as well. This will serve the interest of the community as well as the resources.

#### Minor Forest Produce:

13.35 When we consider the question of minor forest produce, three aspects come to the fore—policy, law and practice. So far as policy is concerned, the Central Government has accepted two principles about minor forest produce quite long time back. They have also repeatedly requested the State Governments to adopt and implement them. The first principle is that the tribal people should have full rights over the minor forest produce. It means that the State should not impose any royalty on these items. The second principle is that the management of the marketing of minor forest produce should be organised in such a way that the tribal gets full market price of the concerned commodities. It is, therefore, necessary that all the expenditure of marketing should be borne by the State Government.

#### State to bear the Marketing Expenses

13.36 We will consider the second principle first. The Government has a big establishment even in the tribal areas. Moreover, of late a lot of police force has been inducted in

these areas. The financial burden of this entire establishment ultimately falls on the Consolidated Fund of the State or the Union. After all this expenditure is incurred in the name of tribal. But the irony is that throughout the tribal area, the relationship between the administration and the tribal people is at least strained, if not that of hostility and direct confrontation. If one were to ask the tribal people about their heart's desire he would say that there could be no greater favour than to withdraw the administration from his areas and allow him to lead his life, freely according to his mores. In this situation, this expenditure cannot be said to serve the tribal interest. On the other hand, there can be no other measure which may be more effective for improving the economic condition of the tribal people in the immediate context than to remove exploitation in all forms for marketing of their produce. Thus management of marketing is the most useful and quick-yielding activity amongst all other governmental activities in the tribal areas. Therefore, it is not correct to pass on the expenditure on marketing establishment to the tribal people, it should be borne by the government without any conditions and reservations.

13.37 I will again like to refer to the Constitutional provisions in this regard. According to the Constitution, if the government considers any activity to be in tribal interest, the necessary funds therefore should be a Charge on the Consolidated Fund of India and the same should be made available by the Central Government. If there is any one item, which is most necessary and useful for the tribal people, is the marketing system. Therefore, there is no justification for the Government of India not bearing this responsibility whatsoever may the formal position otherwise.

13.38 There is yet another aspect of marketing in the tribal areas. The over-heads of marketing in the tribal areas. The over-heads of marketing, besides transportation charges, are also quite heavy because of the sparse population and general

inaccessibility of the tribal areas as a whole. If the residents of hills and forest have to bear the higher cost of marketing because their areas are inaccessible, what is the difference between the trader and the Government. It is the duty of the government to attend to the problems, which arise because of the difficult situation of the tribal areas. There is a specific Constitutional provision to this effect which could be used if necessary. To ignore these problems and not to attend to them amounts to the Constitutional provisions. It is regretted that in the present marketing system, the tribal is loaded on the one hand with the responsibility of establishment of marketing with the result that he does not get even full benefit of his own produce. On the other side, huge expenditure is made on unnecessary items of development and administrative reforms in the name of serving tribal interest, with which he has no concern in the real sense. From every point of view, be it policy, practice, justice or constitutional propriety, it is clear that the entire expenditure of marketing should be borne by the government.

#### Tendu Leaf Policy in Madhya Pradesh - A Basic Question

13.39 A very important decision was taken in Madhya Pradesh last year (1989) regarding the ownership of minor forest produce which is notable. This decision and its implementation present the possibilities about the future and also bring to the fore impediments which are likely to come in the way of realising the same. In this case, the Government of Madhya Pradesh departed from the erroneous, albeit well-established, convention about the minor forest produce accepted full rights of the tribal people on them. Thus, in principle the tribal no longer remained a mere labourer who collected the minor forest produce but became its owner. Eventhough this decision was not immediately given a formal legal form on account of some technical and practical reasons, yet the government decided to go ahead with the entire operation in keeping with the spirit of that basic decision. A necessary corollary of this decision is that the government cannot levy royalty on minor forest produce. The income from royalty on minor forest produce in

Madhya Pradesh is quite substantial. Therefore, with a view to make the financial impact of this decision bearable, the royalty was sought to be removed in two stages. The royalty on minor forest produce except on tendu leaves was abolished with immediate effect. But the royalty on tendu leaves was to be abolished in stages.

13.40 With the adoption of this principle, the perception of the government changed drastically. I had mentioned in my last report as to how there was all round dissatisfaction on the issue of collection-changes of tendu leaves. The Naxalites particularly intervened in South Bastar on this issue which resulted in confrontation between the government and the people. But after this decision was taken in principle, there could be no scope for any confrontation in Madhya Pradesh. The question now was to translate this principle into practice. In this connection, first of all it was decided that if tendu leaves belong to the people, why not pay them maximum price at that very point when they brought the leaves to the market after plucking them. But there was no idea about the likely benefit which will become due to the people under the new dispensation. Therefore, the government decided to proceed with caution. The collection price of tendu leaves in the previous year was Rs.8/- per thousand. This was raised to Rs.12/-. But after sometimes it was further raised Rs.15/- per thousand. This was not all. Since tendu leaves were the property of the tribal people, they had to be treated as their trust until they will finally sold. The profit after the sale, therefore, would legitimately belong to him. In this way the net profit on tendu leaves was the trust of the tribal and deferred payment which was decided to be distributed as bonus.

13.41 It is understood that in view of the financial situation of the State firstly, the government did impose royalty and sales tax on tendu leaves and also decided to use a part of the net profit for developmental programmes. In spite of all these deductions bonus to the tune of Rs.36 to 58 per thousand in different areas of the State was declared. This

bonus, however, could not be distributed because of the elections. An instalment of Rs.10/- per thousand tendu leaves has been paid after the election. Thus, whereas earlier the tribal had to struggle for getting the rate of Rs.8/- only, his entitlement rose from Rs.8/- to anywhere between Rs.51 to Rs.73 inspite of deduction on account of sales tax, royalty and development. If these deductions were not made, his entitlement would have been more ;than Rs.100 as compared to Rs.8/- of the previous year. It is understood that this year every tribal family in Bastar earned, on an average, Rs.3,000/- in the season. If full bonus had been paid the income ;would not have been less than Rs.10,000/-. Thus, in Madhya Pradesh where forest still exists this year, the income of the tribal from one item of tendu leaves alone, has been much higher than that stipulated for the poverty line. Thus, it is clear that if the tribal people are given full rights over the minor forest produce, much of their economic problems will be solved. Moreover, they will also be able to feel that forests belong to them and they are partners in their management.

Welcome of the End of Historical Injustice, But not a Matter for Felicitation

13.42 The declaration of the Government of Madhya Pradesh to accord the status of "Owner instead of Worker" was the first important step to end the historical injustice to the tribal people. While on the one hand, this declaration has been widely welcomed, somuch so that it has been described as a revolutionary step. Yet on the other hand, it gave rise to a lot of debate bring to the fore wide differences of opinion amongst different section of the people. This was natural because in accordance with the new policy, a hafty amount of amount Rs.200 crores was snatched away from the hands of the few traders who earlier used to corner it, about which there was not even a correct idea. While I welcome this policy, I consider that its portrayal as a revolutionairy step is an irony. To call it revolutionary, a sad reflection on our approach to the basic issues in national life. Is it not a mockery of the real revolutionary fervour to call a decision to end injustice that too by the state towards innocent people as

revolutionary? Can it be said that this step has in anyway made for the injustice meted out to the people till then? Is it not the reflection of a mentality that the unjust system can continue in relation to the interests of the weaker sections even if it might involve violation of the Constitution? That is why even this small first step in the direction of removal of a great injustice was not tolerable for the vested interests and it appears that this "revolutionary" declaration, like many other revolutionary declaration, not only has become meaningless, but efforts are being made to deny its very existence.

### Responsibilities, Faith and Formality

13.43 It is with deep regret that I have to say that a variety of adverse forces became active, soon after this declaration was made, to make it ineffective and in the end to deny the same altogether. One view is that this important decision was not immediately give a formal status because it was apprehended that the vested interests, taking advantage of the complexities of our judicial system, may succeed in getting that decision deferred. This decision was taken at such a time when the most important question was to make administrative arrangements so that the people could get maximum benefit. Since I have not been able to get full information from the state government, it is not possible for me to discuss this aspect in detail here. But even then some facts are quite clear, which I consider it necessary to present here.

13.44 The first fact about this policy is that an authoritative declaration of "from worker to owner" was made by the then Chief Minister and it was repeated many a time and was also a subject of discussion in the State Assembly. It is not clear as to what those technical reasons could be because of which it could not be given a formal status. But this far that the State Government had taken the important decision, 'from worker to owner', is quite clear. In my view, formality is not very important in matters concerning tribal interests

which have been, in a way, largely left to the goodwill of the State under the Constitution. The primary thing is the spirit of the decision. Therefore, it is a bounden duty of the State that whatever decision is taken concerning the tribal people, is followed in its true spirit. The State, as the guardian of tribal interest, cannot ignore the tribal interest under the cover of any kind of formality whatsoever if this is done, then nothing could be more regrettable. In that case, the State would not remain worthy of trust even in matters of protection of Constitutional rights.

13.45 I have repeatedly stated that the nature of our system is inequitous. Injustice against poor indirectly under the cover of law and procedure is quite common. But when injustice can be done in the open and even promises can be taken back or denied, then there arises a qualitative change in the situation. That would be the last step towards the demolition of trust in the justice in our system.

13.46 From the information available at the time of the writing the Report (April 1990), the government did impose royalty on tendu leaves even after their "from worker to owner" declaration. It was also subjected to sales tax. Is it not an irony of the first order that the tribal should collect leaves worth 10 to 20 rupees after stogging for the whole day in his forest and then when sells it to the government, the same government, which claims to be dedicated to their development, does not hesitate in imposing sales tax on that small capital which he is able to collect during the day. That is not all. The State Government has also taken but some amount from the net profit for tribal development. The very first point worth consideration is that what better task of development can the government do than to ensure that money reaches the hands of the tribal directly and his income increases? What is the point in snatching one rupee from the poor by one hand and give them a dole of five paise jwith the other? (there is no possibility of larger benefit accruing to him than this if note is taken of the administrative cuts

effected on both sides of any transaction) There is another basic question here. If the tribal is the owner of tendu leaves, what right has the government to make deductions from his money for development? If some money is required for any programme of tribal development, then to provide the necessary amount for that purpose is the Constitutional responsibility of the State and the Centre.

13.47 What view will be taken by the state government on this major question about the basic rights of the people is not clear so far. One full year has passed after the collection of tendu patta. A new government has taken over and time has come for collection of tendu leaves again. But even now the second instalment of the net benefit, which is a trust of the people with the government has not been distributed. That is not all. When I made some informal enquiries, I was told that "no decision like 'from worker to owner' was taken by the government. The advertisement to this effect had gone out by mistake and that same had been denied formally by the government. Therefore, there is no question of abolishing royalty on tendu leaves or giving ownership right to the tribal people. The wages for the year (1990), of course, have been raised from Rs.15 to Rs.25/-.

#### A Question of Values and Trust

13.48 From the above chain of events in the case of tendu leaf - trade in Madhya Pradesh, a number of questions of basic principles and values arise. When there are such sharp ups and downs in respect of the justifiable rights of the people within the state system, how can the State discharge its responsibility of protecting those rights? It is clear that the Minister of Tribal Welfare, whose appointment under the Constitution, is obligatory has failed in the protection of tribal interest. Even after the State Government took a decision to accept the tribal worker as owner, after conceding the fact of injustice to the tribal people by the system itself, its formalities were not completed. Therefore, it is not possible to seek protection of the Court in this matter. I had referred to in

previous report, today the tribal people are not able to get the benefits of the Constitutional safeguards because the Governor did not discharge his responsibilities. The advice of the Commissioner, appointed under the Constitution, has no weight, like the tribal he can also swear by the Constitution and make some noises . But then the matters ends there. Therefore,inspite of a clear reference being made to the effect that the Constitution is being violated, attending to the issues or not depends on the sweet will of the executive.

13.49 The levy of royalty on tendu leaves, after accepting tribal as owner, instead of worker, of minor forest produce, is immoral. To deduct an amount from his profit for developmental work is improper and not to distribute the profit is a straight case of misappropriation. It is the duty of the State to pay the tribal the full amount received after the sale of tendu leaves. That is not all. To reduce the tribal to the status of a worker after a clear declaration of accepting him as an owner instead of worker, is a mockery of the whole Constitution set up under which States have been given the responsibility to safeguards the tribal interests. It is an irony that today, no only the tribal himself but also the tribal leaders are unaware of their rights. The system that considers itself to be justifiable and meaningful, wherein the policy documents and judicial pronouncements have also deeply appreciated the sentiments, underlying it, can however consider reimposing injustice, vehicmently imposed by the foreign rulers, in a very simple way ignoring its moral responsibility in the name of procedural formalities. Would the Governors and the President ensure justice by bypassing formal system so that the justifiable decision to restore their ownership rights does not prove a futile exercise, ending up as a blot in our history of social justice.

### An Appeal for Justice

13.50 If the question about rights over minor forest produce is considered properly, even according to the existing law, then it is clear that the right over minor forest produce was awarded in the favour of the tribal people in the decisions taken in pursuance of the procedure prescribed under the law for reservation of forests. The Dhebar Commission also stated in their Report while reviewing the forest policy, that these rights were reduced to mere concessions and afterwards these concessions also almost ceased to exist. As has been stated above, an important step was taken recently for correcting this mistake in Madhya Pradesh. But once again, formality prevailed over justice. Similarly, the Government of Bihar also conceded the ownership right of the tribal people over the minor forest produce which was duly pronounced by the Governor in his address to the Assembly (January 1990). But even that has not been implemented so far. No initiative in this regard has been taken by any other states.

13.51 When the right to collect minor forest produce had been accepted at the time of reservation of forests itself, then this claim of state governments that the State has right over it and they can levy royalty thereon cannot be considered to be correct even under the present law. This right of the state is a right asserted under duress. Therefore, the people have a right assert their right over minor forest produce under the present law and it is the duty of the state government that they should accept their claim and make suitable arrangements so that they can get full price of the minor forest produce which they collect. I hope that the decision taken by the Governments of Madhya Pradesh and Bihar to discontinue levy of royalty conceding the right of the tribal people on the minor forest produce will be implemented and that other States will also accept that principle. If the state governments even now drag their feet on this question, it becomes the duty of the Central Government that they issue directions to the state that they should not do this wrong act and honour the rights of the tribal people.

### The Question of Land and a Possible Solution

13.52 Now the last question concerns forest land. As I have stated earlier that forest and land are the basis of people's life. The right to life is basic. It is this right to life which is being violated in the tribal area. This play with basic rights must end. However, necessary caution should be exercised to ensure that the forests also survive. But this caution should not be in the form of repression of the tribal people by the government but must be based on the understanding of the tribal people and their full participation as co-equals.

13.53 So far as the resolution of the complex question of forest land is concerned, a beginning will have to be made by accepting the field reality as it is today and proceed further from that point. The extension of agriculture into the forests has been continuing in natural way throughout the history on account of growing pressure of population in the tribal areas. This extension has been deemed to be against the law after the reservation of forests. But even then, the land freshly brought under plough, sooner or later had to be assigned to the cultivators on account of the facts that it was necessary for the life of the people and that they have no other alternative. The government also had no other way out. The law had only one effect, that is, the people were always a little apprehensive. Therefore, it was only after they had knocked about everywhere and got disappointed from all sides, that they thought about making the living even by taking risk of clearing the forest and, if necessary, of going through the ordeal of a jail term for that purpose.

13.54 In this way, the process of occupying forest land has continued. Repeated attempts have been made after independence to resolve the issue of forest land particularly in the tribal areas. Every time a decision was taken that whosoever is cultivating the land in the forest may be given a patta, provided the person was in the entitled category. In other words, if the person had not tried to grab that land only for

the purpose of establishing a claim or creating property. A suitable date was also always fixed for this purpose specifying that all those who may have been cultivating the land on or before that date will be given pattas. Simultaneously, a declaration was also made proclaiming that in no situation any further encroachment of forest land will be allowed. This was declared to be the last concession with regard to the forest land from the side of the government. But in the absence of a satisfactory solution of the basic problem of livelihood of the tribal, that last occasion never came. The cultivation in the forest has been extending continuously. And government declarations have also continued to be made intermitently one after another.

#### And Then the Dead End of "1980"

13.55 This process continued like this until 1980. A basic change was brought about in the legal frame during this year. The Forest Conservation Act was passed under which the state governments lost their authority to permit the use of forest land for any purpose other than forestry for which prior permission of the Central Government became obligatory. Moreover, the Central Government also took a clear policy decision that no fresh land shall be allotted for cultivation under any circumstances.

13.56 In many states, decisions had been taken for regularisation of cultivation of forest land before the enactment of the conservation law. In some cases, declarations had also been made by the states and the process of issue of pattas had also started. After the Conservation Law was passed all these administrative actions had to be stopped all of a sudden and all cases are still pending at the same stage. However, this has made the situation very complicated. For example, the Government of Madhya Pradesh have decided to regularise the lands under ~~encroachment~~ of the tribal people as in 1978. The people are wandering about in a state of utter confusion even after 10 years of this declaration. All those tribals who have been cultivating the land since 1978 or

earlier are encroachers under the law. The Central Government on its side has been exerting pressure on the state governments that all encroachments from forest lands must be removed. Similarly, the Government of Rajasthan has decided to regularise unauthorised occupations upto year 1971 and in Maharashtra those upto the year 1979. Other states are also in a similar situation.

13.58 The illegal occupations, the new law and the directions from the Centre have all proved to be a boon for the forest officials. They are taking action for removing all those people from the forests who are doing agriculture there or residing there, ignoring all the old decisions and even a variety of other rights which the people have in the meantime acquired. There is tremendous discontent in the whole tribal belt on this issue. There is confrontation between the government and the tribal people. The people are asking the official to take suitable action with reference to those decisions which have already been taken. The officers tell the people about the Central Government, the new law and then they simply stop and keep quite. Some people approach the courts, where they may get some relief for some time. But everyone cannot afford to go to a court of law. Therefore, the matter remains where it was, year after year, the roots of the struggles and confrontation in the process become still deeper.

#### Decision and Action - the Wide Difference

13.59 Whenever state governments think about giving rights to the people on forest land with a view to resolve this tangled issue and start some action, then two things invariably happen. Firstly, the stipulated date for recognition of possession of land is always one or two year old. Moreover, it takes a lot of time before action is started in the field for implementing this decision. And nobody knows when this process would be completed. It will not be a wonder if 10, 15 or 20 years may roll on without reaching the final goal.

13.60 Secondly, the process of extension of cultivation does not stop even after the decision of the government to regularise encroachment. Some people or the other continue to extend their cultivation into the forest according to their

needs. Thus, even after the final decision to solve the problem is taken two types of cases regarding possessions of land are found on the spot -(i) those which were made on or before the stipulated date and (ii) the others. After two to four years of the stipulated date, it becomes difficult, if not impossible, to decide whether the occupation of the land was before or after that date. Some encroachments are regularised and some are not regularised, about the latter the people continue to press their claims. Thus, after all campaigns are over. Some cases of encroachment remain unresolved in every village.

13.61 There is one more special feature of this process. The list of encroachments in all cases is prepared by the government officials and action is taken on the basis of that list. These lists usually are not acceptable to the people. Everyone claims about his occupation that it is an old occupation. In this situation, there is considerable scope for a variety of mal-practices. The clever people get pattas even for new encroachments, may be through collusion with the officials. On the other hand the poor and innocent people are not able to get pattas even for their old encroachments. Therefore, discontentment continues. In this way even after important high-level decisions for resolving the issue of forest land and elaborate action thereafter, it is not possible to clear the matter. Encroachment continues in the field. And the same complaints are repeatedly brought before the government in the same form. Sometimes when it appears that the solution is just in sight, a campaign may be started from one side or the other for grabbing the forest land. And then whatever would have been achieved through sensitive officials is coolly undone. The government is then obliged to consider the whole issue once more from the first principles.

#### Inconclusiveness of One-sided Action

13.62 The biggest defect in this process has been that it by its very nature always been one sided. The government officials prepare the list according to their understanding. And so long as the people are not able to present a proof in favour of some change, the lists are considered to be final. There are a number of problems about the proof concerning the period for which the land may have been under cultivation and the person who may have been occupying the same. These problems become still more serious as the time passes. The biggest

problem is that the fact that these lists about encroachment on land are correct cannot be stated with confidence. Therefore, many people have been raising objections about them knowingly to create undue claims in their own favour. In any case, the issue remains unresolved and no one except the government officials have any faith for those lists. All attempts to resolve the issue, therefore, are from the very beginning destined to fail.

#### Participation and Consent of Both Sides Necessary

13.63 Therefore, there is no other way to solve the problem of forest land except by making a beginning from the situation as it is on the ground at the moment. The first necessary thing for this is to have a clear picture about today's situation. There are two important points here - (i) which land is under cultivation today and (ii) who is cultivating that land. So long as there is no agreement from the side of the people of the village on these two issues, the whole exercise will be infructuous. Two things are necessary for ensuring that the action taken is correct. Firstly, all proceedings concerning forest land should be in the open before the common people so that people can know and understand what is going on. Secondly, that geographical unit should be taken as basic for these proceedings in which people know each other and they are familiar with the local reality. These units could be like habitation, para, falia. As the basic for such proceedings becomes largely, there will be increasing formalisation of the proceedings and it will be more difficult to know the reality. Therefore, meetings should be held of all the people in each habitation, there should be discussion in the open, the facts should be checked on the spot and the list should be prepared on the basis of full agreement between the people on one side and government officials on the other. Therefore, this list should contain only facts as are found on the ground. There should be no scope whatsoever for incorporating any opinions therein. The government officials and the people of the village should authenticate these lists by affixing their thumb impressions or signatures, as the case may be so that each list becomes a document depicting the situation as it is, which is acceptable to both the sides.

13.64 Now the second question is about the right of people on these lands. This question could be quite complex. And it has many aspects. Therefore, it will be necessary to solve these questions one by one in stages. There are two important things about individual rights. The first is possession and cultivation on the spot and the second is the legal form of that cultivation. The legal issues in this regard are quite complex. As we have said earlier, it is not necessary that the law itself may be right. Therefore, it will be necessary to clear the question of law first.

### Determination of Rights-the First Step

13.65 We have discussed earlier in detail the legal aspects of the habitations and the land under cultivable in the forests. It is only when the decision about the rights of the people are taken on the basis of those basic premises that the process can be said to be fair and just. In the first instance, it will be necessary to change that current thinking in the government according to which all those people who are doing agriculture in a reserved forest or are living there are deemed to be encroachers. Moreover, attempt is made to deal with all these issues on a uniform basis. The cultivation and habitation in the reserved forest can be broadly divided into four categories.

#### (1) Rights prior to Reservation

13.66 There are a number of cases of cultivation and habitations, in which the rights of the people predate reservation of the forest but which have been ignored so far for a variety of reasons. In no situation these people come under the category of encroachers. They include many primitive tribal communities, shifting cultivators and all those people in whose areas the process of reservation have been completed without caring to go into question of people's rights. There should be no question of driving these people out of the forests.

#### (2) Areas in which Reservation is Incomplete or Irregular

13.67 There is a second category which include (i) all those matters in which the process of reservation is continuing or (ii) where the process has been completed but long time has elapsed but a final notification of reservation has not been issued, or (iii) where there was some basic defect in the process of reservation because of which correct decision could not be taken about the rights of the people. It will be wrong to call the concerned people as encroachers in all these cases. If it is proved that the process of reservation was wrong or the people rights have been overlooked it will be proper to start afresh the proceeding for determining their rights. Unfortunately today people can get relief in any of these cases only if the court interferes. Otherwise even if their side is the strongest, it is always just over-looked. If it is clear at the local level that the legal process has not been followed, justice should be given to the people by starting afresh the enquiry into their rights on the basis of the facts on the ground. Intervention by a court should not be awaited in these cases.

### 3. Disputed Leases Eventhough Given under the Law and Rules

13.68 There are a number of cases in which people have been given permanent or temporary leases in accordance with the law and rules but they are not acceptable to the Forest Department. In all these matters to call these people as encroachers and action against them are wrong. Their occupation should be recognised on an ad-hoc basis on the strength of those regular pattas/leases or any other document. In the meantime the concerned Departments may resolve their disputes and right should be given finally to the people in all these cases.

### 4. Unauthorised Occupations

13.69 The last category of occupations comprises those cases in which the people are making a living by occupying land in the forest without any authority. These people according to the law are encroachers. But even in their cases, broadly there are two situations. Firstly, there are people in whose cases the state government has already decided to settle the lands but who, for a variety of reasons, have not been given the title so far. In the second category are those people who cannot be given the rights over land in accordance with the prevalent law and procedure. The matter of those people who can be given rights under current provision, should be settled without any delay. But immediate action is necessary even in the case of those people who are in unauthorised possession of land and who cannot be given a title.

13.70 The people in the second category who cannot be given a title, themselves comprise two sub-groups. In the first sub-group are those cases where pattas cannot be given for agriculture on account of technical reasons concerning land. For example, in some cases the slope of the land may be steep and cultivating such a land will cause heavy erosion and after some time nothing will grow in those lands. The second sub-groups is of those people who are not eligible for the ground of pattas. These people either may already have a lot of land and may have occupied the land taking advantage of the local situation just to increase their holdings. In this connection I will like to specially draw attention to those cases where big people have occupied extensive lands illegally for establishing/extending tea or coffee plantations. Immediate action should be taken for removal of their unauthorised occupations. Moreover, if it is considered proper to continue with the old use of these lands after their illegal occupations have been removed, the poor people should be made partners therein. For example, all the big plantations should be given over to the workers collectively in which every individual could be

made responsible for personally looking after a small piece of land. We will be discussing in detail about this arrangement.

13.71 In this way on the one hand are those people who have a right over the land, both in terms of the law and on practical considerations, but which has not been recognised so far. It is not proper to keep these people also in the category of encroachers. On the other extreme are those people who have encroached upon the land just for extending their estates, building property or for making windfall gains. There is no justification for any of these people to continue in the forest. They must be evicted from the forest immediately. In between these two extremes there are those people who some how are making a living by cultivating the forest lands. Their cases should not be disposed of with reference to the letter of the law but the question of human rights should also be considered.

#### The Solution- the Context of the Right to Life

13.72 It may take some time to settle the legal status of present occupations. In some cases, it may be a very long drawn process as we have seen in the cases of Sonbadhra in U.P. But whatever may be the legal status of present occupations, if a person is making a living by cultivating the forests land and has been doing so for sometime, in that case no one has a right to remove him from that land. That land is a source of his livelihood. Therefore the use of land is linked with his right to life. Moreover, in the tribal areas there are related issues of Constitution rights and the basic human rights. The present laws concerning resources including land themselves are not in consonance with the spirit of the Constitution. Therefore, instead of getting entangled in legal issues immediately, it will be necessary to proceed on the basis that 'who so ever cultivating the land has a right to continue to cultivate the same'. His occupation can be interferred with only after the process has been initiated and a decision taken in accordance with the basic principles which I have already proposed earlier. It may be alright if he continues with the occupation of land without accepting his legal right to do so. But he should not be prohibited or barred from doing what he is doing today for making a living. Therefore two immediate tasks must be under taken under this stipulation. Firstly, the state government should immediately issue orders to the effect that the tribal people should not be removed from the land which he may be cultivating. Secondly, all cases pending in the Courts concerning forest land should be withdrawn forthwith.

### Year after year Confrontation and the Game of Hide and Seek

13.73 It will be proper to make a reference to some facts about the cases pending in the courts. So far as the cases about the forest land are concerned usually there is complete peace all around until sometime before the season of cultivation begins. At this stage, on the one hand the tribal begins to prepare his land for the next crop. But simultaneously the officials of the Forest Department on also start moving about and take action so that the tribal may not be able to cultivate the land. When the officials start this action they fully know that the tribal shall necessarily cultivate the land because that is a question of his very life. Their action for checking the cultivation is for two reasons. Firstly, they take the action either in discharge of their duty or pursuance of instructions from above. But the second, which is more important, is that this is the time when the tribal is most desperate. If he is not able to cultivate his field, what will he eat? Therefore, he is prepared to do anything and strike on compromise at any cost.

13.74 Nevertheless the tribal cultivates the land, he has to offer some illicit gratification for that wine and chicken included, in some cases he has to face lathis and batons and he may have to go to jail, he is ready for all these eventualities. This is a story which is repeated in that order year after year. In some cases, the people are mentally prepared in advance that even if one person in the family is required to go to the jail that will be in order, the women will be able to look after the land. Some people are also able to approach the Courts. Some times they also get some relief from them. On hearing their woes, the government also sometimes moves and gives instructions not to destroy the crops in their fields. In this way after a lot of turmoil for sometime, peace is restored. But the same process starts exactly with the same questions and follow up actions the next year. It is regretted that no action has been taken at any level to end this vicious circle. This is pure and simple injustice to the people. For finally solving this dispute, the occupation of the people of the land as it is today should be accepted and in all these cases all types of legal action should be stopped. So long as this is not done, tension will prevail and it will be impossible to find a satisfactory solution in a charged atmosphere like this.

### Agreement with Village Community

13.75 It is very necessary to keep in view that this plea for not to interfere with unauthorised occupation may not become an open licence for indiscriminate clearing of forest for cultivation and lawlessness. The plea for non-interference is the first essential step to get out of the tangled situation of today, for which the major fault rests with the system. In fact this step is a precondition for bringing about a favourable milieu with regard

to forest and land and engender the atmosphere of healthy mutual trust. It is clear that the protection and development of forest are necessary for promoting the interest of the people besides serving the interest of the environment and of the country. The first benefit of protection and development of forests will accrue to the common man. But this can be possible only in that situation, when the people are made partners in the management of forests and it is entrusted in their hands. If such a decision is not possible legally when the issue of land is taken up, it should be accepted atleast in principle for operational purposes. It is only after the responsibility of the people in the management of forests on the basis of partnership is appreciated that it can be expected that they will behave with full responsibility. Only then the people will understand that forests can become the basis of their life. Once this become clear, they themselves will not extend the cultivation in the forest, not will they allow others to do so. They will search some other alternative to some how make a living through mutual assistance. However, government help will be necessary in this regard. The government will also have to think seriously about providing an alternative economic base to the people living in forests.

13.76 In this way mutual understanding between government and the village community, <sup>an</sup> atmosphere of good will and a clear prespection about the future will be necessary to solve the problem of land. A beginning in this case can be made on the basis of an informal agreement between the two sides. On the one hand, the government may promise that so long as a strategy based on mutual understanding is not evolved, in future no action will be taken against the people about the land which is already under cultivation. On the other hand, the village community should take the responsibility of ensuring that cultivation will not be extended further into the forest. The list of land under cultivation prepared together by the village community and the government officials can be the basis for this agreement. If this action is initiated, the present confrontation between the government and the people will cease. In a way, it will be like a 'ceasefire declaration' from both the sides and there will be instant peace throughout the area. It will give an opportunity for further action or make the instant peace permanent, it will be necessary that a long term plan is jointly prepared for the use of natural resources in the tribal areas and for providing inadequate means of livelihood to the tribal people.

#### A Long-term Plan for the Use of Resources

13.77 It will be necessary to have a dialogue with the people about the preparing a long term plan for the use of forest and land. In the first group are those lands which are fit for agriculture and whose use for cultivation will not be detrimental to environment. It will be proper to give this land for agriculture permanently. The second group will comprise those lands which

cannot sustain agriculture for a long time. Therefore, even if these lands are under cultivation at present, that use is detrimental to environment. In this situation, it will be necessary to accept in principle that land will not be kept under cultivation. But these should not mean that the cultivation of these lands should be stopped forthwith. The people cultivating such land should be told about the possibility of some alternative uses of these lands like tree plantation and suitable programmes should be prepared after considerable thought. I will discuss this question in detail later. If the land is not even fit for growing trees, some other alternative arrangements should be made for enabling the person to make a living.

#### Responsibility for Providing an Alternative Base

13.78 One thing should be clear from the very beginning with regard to all these principles that a tribal should not be asked to get out of any land what-so-ever until such time as he does not get another base for making his living which he can adopt happily on his own. When a person is asked to move out of the land, then it is a question of life for that man, it is also a question of the rights of that person. In the tribal areas, it is also a question about the rights of the tribal community about the use of those resources. After all when a person is engaged in back-breaking work in a really difficult situation, even when he knows fully well that his income will not be equal to even the wage which may earn and he may not be able to get enough food for his own sustenance, it is because he has no other alternative. Therefore, he is trying literally to extract oil out of sand according to his understanding. In the context of planned economic development, his helplessness like this is indicative of the failure on lack of understanding on the part of the administration and the system. He cannot be reasonably blamed for this. He should be commended for his initiative and hard work. In any case, he should be given an alternative which is acceptable to him. Therefore, it will be necessary that they should sit together and discuss the matter, deal with every individual as a person at the level of the community. Unless such an arrangement is not made, the State has no moral right to tell the person that he is indulging in a wrong activity. He is doing whatever he considers as right for making a living. If the State cannot give him any other alternative, he will continue to do what he considers as proper. This is his basic Constitutional Right.

### Special Arrangement for Employment in the Tribal Areas

13.79 Even if the person, who is cultivating the land today is allowed to cultivate the same, it will not provide a lasting solution of the problem of the tribal people. Therefore, it will be necessary to make a special arrangement for these areas. This arrangement will have to be made for each area, keeping in view its specific situation. One thing, however, is clear that everyone knows that if a tribal can get sufficient for two square meals he not only stops cutting the forest but stops doing other work as well. This is the experience of forest officers every where that wherever work is started, it immediately reduces the illegal feeling of forests. Therefore, there is only one panacea for protection of forests that is, to provide full employment to the people living on these areas.

13.80 There are employment guarantee schemes in many states. But the irony is that its benefit does not reach those areas where employment is most needed and when it will also help in protection of environment. In a state like Maharashtra no work could be started by the state government in the remote areas of Gahchiroli even after they suffered draught for three long years in that area. When the government decided to open foodgrain shops to face the scarcity the people asked who will purchase the grains and how? Even then the arrangements for employment could not be made, because all efforts got struck somewhere or the other on account of some formality. The main reason for this is that the ordinary programmes are extended to the tribal people without keeping in view and understanding their special problems. It will, therefore, be necessary that the programmes are taken up beginning with the remote areas and a special employment guarantee scheme prepared for them.

### Re-establishment of Harmonious System

13.81 In brief, a process of reconstruction and development in place of the dependence and destruction of forests can be established only with the partnership of the people. To achieve this the first essential measure will be to create an atmosphere of mutual understanding after ending the state of confrontation. Effort should be made to understand the situation of the person wherever he is and an alternative arrangement should be made for him. This is also the special responsibilities of the state in the tribal areas. A lot of investment is already being made in all these areas and it is essential and much of it even does not reach the most backward areas. The need of the time is to reverse this process. The work should be started from the point where it is most needed, where the pressure on forest is maximum. If such programmes were taken up in these areas which protect and develop the resources their first benefit will accrue to the tribal people, provided, the area not

purposely left out. It will be certainly in the interest of forests and also of the tribal people. A basic change in the perception of the people associated with the system and the state is necessary. What this new system should be, we will discuss in detailed later. .

## COMMAND OVER RESOURCES - 7

DEGRADED FORESTS, FALLOW AND MARGINAL LANDS,  
THEIR DEVELOPMENTAL-CUM-EQUITABLE USE

When the stronger people and the Government consolidated their rights over natural resources, the poor man was obliged to make his living from whatever was left and he had to be content with whatever he could get out of the same. When it was difficult to get enough from these resources even for two square meals, he was obliged to start working with people who commanded the resources. Thus the poor had no other way except to make his living by cultivating unproductive lands or working as labourer on other's fields or whatever they could get from the remaining resources.

Who is at Fault for Degradation ?

14.2 We have seen earlier that the condition of the bulk of the poor has been deteriorating after independence. The stronger people in the village have gradually acquired control over remaining resources, a process which is still continuing. Therefore the scope for the poor is becoming smaller and smaller. Secondly, for meeting the gap of their deficit economy, the poor people lost their land or even other property. Some of them were forced even to sell their liberty and honour and all these people have either to somehow eke out a living from the dwindling and degraded resources or they have to roam about elsewhere for earning their bread. The condition of these resources is further deteriorating day by day on account of the increasing number of people dependent on them and their rising requirements on other counts. Thus a very big question has arisen in our national economy that if this trend continues for some time, the resources will not last for long, because of which the very basis of life not only of the poor but of the entire nation would be destroyed.

14.3 Thus a very grave situation has arisen in our country both for the poor and for the entire nation in relation to the command over resources and their use. One thing about which there is full realisation, yet nothing is being said anywhere, is that the better off people who have

acquired undue entitlements over these resources are not bothered at about their degradation and destruction. These people no doubt make a lot of noise about the fact that the resources are being destroyed. But they put its entire blame on the poor and thereby consider as if their duty is done. And with the grand feeling of having fulfilled their responsibilities, they get busy in a variety of tricks to pursue their interests without any fear and the pace of degradation and destruction of the natural resources becomes still faster.

#### Improvement of Resources - Primary Objective

14.4 Broadly two questions arises in the case of resources. The first is about regeneration of the degraded resources for protecting the environment. The second concerns the optimum utilisation of resources for economic development so that the Gross National Production may increase. A variety of strategies are considered for this purpose. But it appears that it is the perception of the better off sections of population which has been used in working out these strategies. There is a lot of talk about national interests, but in reality they all are aimed at their's sectional interests. The interest of the poor, amongst whom the members of the Scheduled Castes and Scheduled Tribes comprise a large section, remains overlooked. No attention has been paid to their condition. This one-sided action is having a very bad impact on their socio-economic situation.

14.5 As has been stated earlier, is an ancient country like India no place can be empty. Someone or the other must be somehow linked with the land or the resource for his living which is not under private ownership. It is of course true that these people do not have a legal right. Therefore, these resources are taken to be unencumbered by the government and the bigger people. And since the ownership of non-private lands is that of government, therefore the government can put it to whatever use it may like.

#### National Endeavour - Partnership of All

14.6 It is on the basis of this thinking that the government has prepared a variety of programmes for improvement of environment and making the

resources more productive. Some programmes are being taken up on degraded forests and fallow and unproductive lands. These three categories together account for more than 50% of the geographical area of the country. If we take out degraded forest from this account, atleast one third of the geographical area will come under the category of fallow and unproductive lands.

14.7 In this way it is clear that the preparation of land for development of all degraded resources and for putting them to better use is a very big task. Therefore, all those who may participate in this in whatever form should be welcomed. It is not necessary in such a big task of national importance to start a debate about who will gain? It is presumed that the scope of participation in this work is not limited. In fact the number of willing participants in this task is not adequate. Sufficient scope can be found for the poor and the rich alike to whatever extent they may desire. Therefore, even if the rich people participate in this programme they will not take away the share of the poor. The poor also can participate in the same according to their strength. Secondly, even if the rich enter this programme, its benefit ultimately will go to the poor; it is they who will do the manual work.

#### Plea for Participation of Industries

14.8 A variety of big establishments have made a plea for participation on a large scale in programmes of development of waste lands and degraded forests. The first in this group are industries like paper, rayon and pulp whose raw material comes from the forests. According to them, the forest are now almost finished and they are not able to get their raw materials from them. Even where some resources have remained, the Government is not prepared to permit them to work those resources on account of environmental considerations. Therefore, they are demanding from the Government they should be allotted degraded forests or fallow lands on which they can raise necessary plantations and meet their own requirements.

14.9 This plea of these establishments at the first sight appears to be in order. Moreover, their suggestion is also sought to be presented in a complimentary frame. For example, if in case they are obliged to make their own arrangements for raising the raw materials rather than taking it from the forest, it is atleast the case of denial

of justifiable concessions, if not of outright injustice. When these industries will raise their raw materials after making necessary investments, the cost of their raw material will be much higher than the present one when they are taking it with the forest. Thus, the concessions these industries have been getting so far will get discontinued. In future, they will have to pay full price of their raw material. Therefore, the functioning of the entire industry in future will be on the basis of true input-output. Therefore in the present world, when nobody wants to compromise on any rights, that the industry should present an alternative system from their own side with pleasure, keeping in view the changing situation, that itself should be considered as the great event. Therefore, instead of raising any objections to such an arrangement, it should be welcome.

14.10 And the logic of these establishments is readily accepted by our system. Barring some exceptions, the lease of fallow lands and degraded forests are being given to industry for raising exclusive plantations. It is in pursuance of this policy that a very big lease (about 30,000 hac.) has been given in Karnataka which includes both forest land and fallow land. This lease is facing a stiff opposition from the ordinary people in the Karnataka most of whom are poor. They assert that their life depends on these lands. Therefore, they are not prepared to leave their entitlement over these resources and they would not allowed the industry to occupy the same. I will discuss about this lease later. Here we will consider some issues of principles involved in such leases.

### People's Right in the Use of Resources

14.11 From the issue of lease of fallow land to an industrial establishment, we in the end come to the question of the right of the ordinary people to make a living from those resources. Can we say that the people have no right over the resources simply because their rights are not recorded on paper? Can these resources be given away for some other purposes ignoring the rights of the ordinary people who have been traditionally dependent on them for meeting the requirements of life? It is possible that when higher investments are made on these resources, the production will be more and, in this way, the whole national economy will benefit. But here again the questions of the entitlement of the people and social equity arise. Who will gain? and who will lose when

the resources are put to the new developmental use? Will the person who has been making a living from these resources have a share in the benefits likely to accrue from the new use of the same resources?

14.12 It is clear that the entire profit of the activity once the fallow land and the degraded forests are transferred to the industry will accrue to the industrial establishment. Some labourers will get wages from it. It is also possible that an arrangement may be made that a part of the new produce will be given to the local community. But it cannot be said with certainty that the benefit to that person, who is making a living from those resources today will be more compared to what he will lose in the process. The inevitable conclusion is that even the small income which this person is able to make from that resource will be snatched away. If someone gets some employment that is his luck. There is no certainty about it. The profit from these resources will definitely accrue to those people who can make capital investment. This programme can raise production, which is accepted as development today. But, by the same token, those resources are snatched away from the poor or get out of their reach. In this way injustice to many poor is an essential part of this process. This is what is happening. But now the poor is not prepared to accept this injustice. Therefore, they are launching movements and are fighting against injustice.

#### Other Programmes of Tree-planting

14.13 Just as industries are being assigned land for captive plantations, many other institutions and people are also being included in programmes of tree plantation and environmental protection. The conceptual frame in their cases is the same. Loans are being arranged from banks. Some programmes are being prepared specially for the poor which have a provision for subsidy also besides loan. The land for these programmes is being given on lease or under special tree-pattas. The people can only plant trees on these lands. They will have a right over trees, not on the land.

#### Consonance between Social Equity and Other Goals

14.14 There cannot be any difference of opinion about objectives of all these programmes, that is, improvement of environment of our country

and greater productivity of all natural resources. But the first question is that whether the way these plantations are being raised will really serve the interest of environment and whether the land will really become more productive under that use. As we have seen earlier that according to the new thinking, single-species plantations do not come in the category of forest (See page 106). The question that whether such plantations are really more productive will be discussed later. Here we will first consider only this point that whether the crucial question of social equity can be separated from the issues of environmental protection and their higher productivity use? And further is it necessary to sacrifice or ignore the interests of the poor in the interest of environmental upgradation and resource development? Or whether while fulfilling these objectives it is possible to ensure simultaneously social equity and the poor can be made partners in the production system.

#### Dedication to the Poor - How Much Real ?

14.15 That the poor should have a share is accepted even in these programmes. For example, a share in the production in the case of Karnataka Paper Pulp Ltd., has been reserved for use by local people. Similarly, some reservation is made for the poor in other programmes as well. But mere reservation for the community or the poor in a programme cannot be accepted as a conclusive evidence of the fact that the interests of the poor or the community will be protected or the questions of socio-equity will not remain unattended. Even in those programmes where separate places are assigned to poor and non-poor formally, it is generally the non-poor who grab the entire benefit. The poor may get some minor benefits or they may be given some benefits consciously after careful thought, as a part of a strategem so that they can be put up on suitable occasion and the programme can be proved has been dedicated to the poor. For example, one institution can be assigned 1000 hac. while 1000 poor people may be given 500 hac. and thus on the basis of numbers, it can be proved that the programme is that of the poor even though the reality is just the other way round.

14.16 This is precisely what is happening in almost all the States except West Bengal. There is a place for the weaker sections in the programme of tree-pattas, but there is no clarity about what they will get in reality

out of that. For example, there is a provision in Rajasthan that atleast 50 percent of the beneficiaries shall be the members of the Scheduled Castes and Scheduled Tribes but the rules are silent about how much land will these people get. That is not all. According to the rules of the State a poor person can get 1 hac. of land while others can get upto 5 and institutions even more. Such a scheme is supported by the argument that "what will a poor person do if he is given more land, he does not have even sufficient to eat, how will he manage capital for investing in it ?" There is wonder if the big people taking advantage of this situation, grab extensive lands in the midst of such convenient rules and deceptive logic and establish big new jagirs.

14.17 All these programmes of waste lands and degraded forests are an outcome of the basic inequitous character of our system which are sought to be justified using all sorts of arguments and even wrong and deceptive concepts. That is not all. Not only the inequitous processes are getting support in the name of high principles purely for personal gains, but even the great national objectives-environmental improvement and regeneration and optimum use of resources, - in whose name all this is being done, are being compromised. It will be necessary to consider some basic question to understand this trap.

#### The Real Face of Plantation Economy of Industries

14.18 First of all it will be necessary for us to understand the real nature and correct accounting of the leases of land granted to an industry. It can be said in a way that the plantation for an industry is like cultivation of trees from which they produce their raw material. The industry just invests in the production of trees like other activities. In this way, everybody will be benefited - the people will get employment, the industries will get raw material and the industrialists economic return.

14.19 But the economy of plantations is not such a simple one which can be justified on the basis of this superficial argument of input-output. The use of labour in the activity of tree plantations is very little in fact notional. Once trees have been planted, not much work is ordinarily required except for its protection. The most important work in the development of forests and plantations of tree cultivation

is their protection. Their protection is priority a gift of nature, the contribution of                      in it is negligible.

14.20 The underlying principle of nationalisation of private forest after independence was that a person should not have a right of private ownership over such resources which do not require much by way of labour input for their economic use. Every person can have full entitlement on the fruits of his labour in an equitable socio-economic system. But if a Jagirdar has thousands of hac. of forest it is like a property for him from which he can earn crores of Rupees without any labour. It is true that some investment may be necessary for the upkeep and development of these resources ; some labour is also required. And it can also be said that the modern plantations or tree culture also require higher technique, more labour, heavy investment and new organisation. In this way, this activity can also be said to be an activity involving input-output like agriculture. But this argument has a twist which needs to be cleared.

14.21 This argument is part of a deep conspiracy of the rich to establish rights over natural resources in our country. The way the plantation or tree culture economy is generally presented gives an impression that it is also an ordinary activity involving input-output in this is quite defective. In fact, it has been knowingly contrived in such a way that the poor may not be able to enter that activity. The real investment for production of raw materials in the plantation or tree cultivation is almost nil. But attempts are made by adding a variety of un-necessary expenses to cover that fact so that it gives an appearance of a real economic activity. Therefore, the investment by industrialists in plantation activities are not only , to a large extent, unnecessary but they are not in the national interest on any of the three counts, namely, environment, production and social equity.

#### The Real Basis of Development of Resources

14.22 Let us consider the claims of better use of resources or development of resources in case the fallow land and degraded forest are given to industries and the rich. The first thing which must be considered here is that every piece of land sustains plant life of a vast variety about which today even full information is not available. But even then,

local people know the use of many of those plants on the basis of their experience spread over centuries and make their use. As we move towards the forest from advanced areas, the entire life of the people becomes increasingly dependent on the use of local resources. Ideally all forms of the natural produce - leaves, fruits, roots - are invaluable for his life.

14.23 But the perception of the government or the industrialist about the same forest or land is just the opposite. For them only those items in the rich vegetational wealth have value which are "useful" for them. They look at the entire natural resource only from the angle of investment and profit. Once upon a time when bamboo had no use for the modern system, the forest department considered it weed. But for the ordinary people bamboo was valuable then and continues to be so even now. The industrialist is not concerned about anything which grows in the forest or on the land until it can yield him some profit. That is why the government has been extracting only timber from the forest. The fruits and flowers, the creepers and other plants had no value in its view. Similarly, whatever is required in the form of raw material has a value for the industrialist, everything else is unnecessary.

14.24 An all out effort has always been made in the industrial system, which also is quite natural, that their basket of production should contain nothing except what is useful for them. Therefore, monoculture plantations have been established after clear felling natural forest which has always been strongly resisted by the local people. All programmes of plantations and tree culture basically represent a fight against the power of nature. Whatever is being offered by nature in a particular area may be considered to be useful only because no profit can be earned from the same. In this way on the one hand a very small part of the gift of nature is used in these programmes and , on the other, there is a continuous struggle against the forces of nature for increasing the production of the so called useful commodities. All these expenses are non-essential but are included in the investment of the enterprise. It is thus clear that the plantation or tree culture do not increase the production of natural resources in the real sense ; on the contrary they reduce it.

14.28 If the very same resources are under the control of the ordinary people, the scene completely changes. The thinking of a person who has only a small piece of land is entirely different. He keenly observe everything which grows in it, tests it and uses it if possible. He plants trees, but he also puts some other plants along side the tree. He also uses the grass and other things which grow in that land on their won.

He keeps goats in one corner and rears poultry in the other. The forest dweller also has the same methodology. In this way, there can be no better arrangement from the point of view of production from natural resources and their use than that the user of the resources himself should manage it.

14. 26 The current arithmetic of our economic system is not only incomplete but also wrong. No account is maintained of the needs of the common man. If a product is not taken to the market for sale, its very existence is not recognised, not to speak of taking note of its market value. If the needs of a person are directly met from certain resources, then no value is counted in respect of that produce. It is on the basis of such half-baked and wrong accounting that the produce of the new jagirs of industrialists turns out to be more and nothing gets noted in respect of bari of the poor man . And it is conclusively proved that the industrialists are making proper use of the resources which serves the interests of both the nation and the poor alike. After all the poor also get some wages. But if we look at the total account of the production and also take into account the benefits which can accrue to the poor man, the total produce from the bari of the poor will turn out to be much more compared to the 'jagirs' of the rich. It will be so much more that there can be no real comparison. That is not all. The benefit for the protection of environment through the participation of the poor man, both direct and indirect, will be much more.

14.27 In fact it was on account of this wrong perception that there is not even full and correct accounting of the profit and loss during the new phase of development. There is no realisation about the sufferings of the poor. The area of agricultural lands has increased plantations have been established and the benefits from them are included in the national production. That production became a part of the market system. With this new use of resources some people acquire proprietor rights or

monopoly rights over their use. But the basis of life of those people in the process is snatched away, who depend on them for collection of roots, shoots and fruits. Today the geographical area under the forest has been reduced from about 23% to about 11%. The adverse effects of this reduction on environment is a matter of grave discussions. But there is no count of what the people used to get by way of wood from that 12% of the geographical area which now is no longer available to them. Similarly there is lot of discussion about the possibility of certain wild life species getting extinct due to indiscriminate shikar. But there is no account of the loss sustained by the ordinary people who were getting their protein from the natural shikar of wild animals which now is not possible.

14.28 The benefits of development have accrued to the modern system or a smaller number of people belonging to it. For bulk of the people it has meant loss of ~~forest~~ produce and shikar. The production of food articles is recorded to be rising in the account of national production. It is possible that the quantity which the poor get from the market system may also have increased. But that their standard of nutrition has gone down and has become very low in many places does not appear in this account. There is not even a realisation about what has been taken away literally from their plate.

### The Reality of Investment Accounts

14.29 If we now turn to the nature of investment in plantations or tree cultivation on account of which this gift is being given to the rich people, the situation will appear to be just the opposite. As we have stated earlier that some poor man is linked with every piece of land.

If that land is given to someone else even for better use, the first task which the new owner will have to do is not to allow that poor person the earlier use of that land and, infact, not allow him even to enter it. This struggle has been continuing through the ages in relation to the alternative uses of natural resources. The tribal has to protect his fields in the forest from wild animals. At other places people have to struggle against cattle rearers when they bring new lands under plough. The main problem faced by a single - cropped area after it is brought under irrigation is its protection against animals from other villages.

14.30 But all these processes of change are very gradual. Moreover these struggle are amongst different sections of the same community and they are also resolved mutually in a common meeting. But when the government industrialists and the rich suddenly acquire control over resources and begin to put it under an alternative use according to a plan, the change in the use of that resource is sudden. Therefore, the first and the most important task in all these programmes is to protect the new jagir against those people who were somehow making a living from them earlier. Therefore, before plantations are established on a fallow land trenches are dug around it, wire fences are erected and when protection is not possible with ordinary wires, electric current is passed through them. The maximum investment in all these programmes is on account of protection. No programme can even be thought without it. But how fragile is all this fencing without people's participation? It is not necessary to go far to see this. There may be a two-foot wide filling in trenches which may run for miles and one wire may be cut at some place out of thousands of high pole going around the land. And that becomes an easy passage for the cattle beyond that great wall! And if greater strictness is observed, the last resort is an invitation to the extreme for support and the entire system cracks thereafter!

14.31 Unfortunately this unjust system appears to be so natural that its anomalies do not appear anomalies. It is on this count that all these programmes are plagued with struggles against the poor man in one form or the other. And the price of that struggle is taken to be investment in development. Here we come across a basic question as to whether the struggle against the poor is an inevitable part of the development process. Whether the investment against this struggle is necessary and whether that investment is really an investment for development. Is it not possible to have a scheme for the use of these resources in which the poor, who have been getting something for their living out of these resources, may get something more? An internal truth about human society is that no obstruction can be effective against the people's wave. All the walls, howsoever strong, will collapse, sooner or later, against the strong tide and not even a trace will be left. What will remain is the people's consciousness and people's will. The entitlement of the common man in the benefits of new development is the biggest protection; after that no other protection is necessary. In that situation, with heavy reduction in the investment, these programmes will be much more

beneficial not only in relation to social equity but also in terms of pure cost-benefit.

### Costly Programmes and limited Scope

14.32 There is yet another aspect of development of waste land and degraded forest and their use which has not claimed much attention. Even though in many cases lands not really suitable for agriculture are being used for agriculture but the bulk of the fallow land has not been brought under agriculture because it is not suitable for agriculture. There are two reasons for the unsuitability of land for agriculture. Either the quality of land is not good or there is scarcity of water. Now, if a national programme is being formulated for these areas, it should be such which can cover the entire waste land and degraded forest or all these resources can be put to the optimum use. If this is to be achieved, then the investment per unit has to be kept so low that a programme can be viable on input-output considerations even on the worst lands. In other words income should be more than investment.

14.33 We have seen above that the nature of programmes of industrial establishment in relation to fallow land is such that the benefits actually derived from land are much less, in fact they are only a small part of what is possible. Similarly, the unnecessary burden of protection in the context of struggle against the poor becomes so heavy that the investment becomes very high. This is not all. A variety of other expenses are also included, most of which cannot be said to be necessary. For example, provision for watering is deemed to be almost inevitable in these programmes. The argument is that if no water is available the plants may dry out. But the implication of this is that the programme of tree cultivation can be taken up only in those areas where arrangement for water is possible.

14.34 It is obvious that the extent of such areas is very limited where arrangement for water is possible. Wherever water can be got people do agriculture. The maximum opportunity for labour is provided in such lands. The land is fallow because it is not suitable for cultivation and a source of water does not exist. In this way if the need for watering is accepted the scope of this programme will become very limited. That

is why when big establishments or the rich people enter these programmes they try to get best possible lands. And if they do not get good land they somehow riggle out, notwithstanding the lip service to the great principles of environmental development. Who is to struggle with marginal lands ? This has been the experience so far. In this way, even programmes of tree cultivation cannot be taken up on the bulk of the marginal lands because they are deemed to be non-viable on the basis of such input-output considerations. That is not all. The expensive programmes of the rich create wrong yard-sticks for the general programmes. Therefore, if a low cost programme is prepared for the marginal lands it is considered as incomplete by the banks. And when the expenses are high, it is declared to be non-viable. Therefore, in either case they do not qualify for bank credit.

14.35 If the logic of rich that the cultivation of trees may be taken only where water is available were accepted by the ordinary farmers for their agricultural operations most of the farmers in India will not be able to do their cultivation. The ordinary farmer in our country takes the risk of water scarcity and erratic behaviour of monsoon. The biggest argument for taking up plantation of trees instead of agriculture on lands in areas with low water availability can be that the possibility of loss on account of water shortage in tree cultivation is much less.

The supply of water for cultivation has to be strictly according to the seasonal requirement. Even if the total rain may be the same, but if its spread is not proper, the entire cultivation in the area may fail.

14.36 But this is not the case with cultivation of trees. Even when water is not available the trees are also to survive. If the growth is less during a scarcity year it may be higher in a good year. It is true that if there is lack of water in the early stages after plantation, the plant may die. But to plant a tree even after taking the risk of erratic rain is much more logical than not to plant a tree because of the risk due to shortage of water or no rain. This is the only alternative in the situation of our country. If a plant dies out this year, a fresh attempt can be made next year. Even in drought-prone areas 3 out of 5 years can be expected to have normal rains. And the world, particularly the world of our farmers, is built of hope. If the ecological balance

has to be restored in our country even the worst lands have to be brought under vegetational cover and the risk of erratic of rain will have to be taken. After all the forests grow on their own in similar situations and also prosper. The same processes will have to be continued with the initiative of the man.

14.37 Similary in the programmes of big establishment, as we have seen earlier, attempt is made to plant selected species instead of taking full advantage of natural forces. If instead of this approach, full use is made of the potentiality of the existing root stock in the land, a large variety of plants and trees can grow without any investment whatsoever. Selected species are required by industry. But the natural forest strengthen the economy of the common man. Here we have an extremely anomalous situation. The investment on plantations, which in overall terms yield only a small benefit is very high while the investment on natural forest, which in their totality give much more benefit, require very little investment . But since that small benefit accrues to the indusjtrialist , therefore he does not hesitate in making even large investment. On the other hand, where the benefits accrue to the poor firstly they do not get reflected in the overall accounts anywhere. Therefore, even small investments on such programme are considered to be wasteful, even though the overall benefits may be very high.

14.38 In this way the input-output accounting of such projects and programmes is very odd in which only the interests of the rich are fully taken care of and the interests of the nation and the poor are completely ignored. When such heavy investments are accepted as essential, it is possible to prove that the activity can be taken up only by the rich people and only such people can be given that responsibility. And it is possible to ease out the poor from such programmes. In fact, the scope of these programmes gets limited to better areas only about which nobody seems to bother . And when the question about limited spread of the programme is raised, then a plea is taken that 'after all what can be done if something is not viable'? But the definition of viability is itself so framed that the rich people are able to create their rights over good resources. In this way, this whole process is part of a deep conspiracy for excluding the poor from the rights over natural resources and their use ; and even national interest gets ignored in this process.

### The Plea of long Gestation Period

14.39 There is one more argument put forward against inclusion of poor in these programmes. It is presumed that the income in these programmes will start only after a long time after the investment is initially made. In this situation a question is asked whether a poor person can wait for so much time after making an investment for the income to flow. It appears that as if there is no answer to this question. Therefore, it is presumed that the plea that the waste land should be given to those people who can make an investment and wait for five to seven years when the income begins to flow. Since no one other than the rich people can do so, therefore this responsibility has to be borne by them in the national interest.

14.40 This argument has another hidden meaning, that is, in no case these resources should be allowed to go in the hands of the poor. This argument is also a hollow as the other argument. The real question even here is about the perception. The first truth of our economic system is that the poor, wherever he is, makes his living persons who has to work for making a living somewhere is included in a new programme then his condition will improve. So long so he himself does not so desire if will not any difference so far as his other activities are concerned. Moreover if the programmes of fallow land are properly prepared then whatever labour investment he has to make by way of in that activity can yield him some wage income. In this way his total income will increase. In this situation talking about waiting for a long period is meaningless.

14.41 There is one more thing. If the poor and his family have something in plenty it is their labour. The labour with which he earns his living can be used by him for his own work. It cannot be said that at present people do not have spare time, and that too for their own work. Every family can take out sometime even after working as a labourer elsewhere which they can use for developing their own resource-base. Most of the activities in these projects are such which the entrepreneur can get done only through labourer. But the same activities may not require extra effort if a labourer himself is involved in that activity. The protection of land is automatically taken care of as soon as the family begins to live on the field or the children can do it while playing about.

Ordinarily money is not required for this type of work, because after all it is his own work. But if he gets a wage for all these items of work also, that will add to the quality of the programme and there will be some addition to his income as well.

14.42 That it may be necessary to wait for 5 to 7 years for income to flow from tree cultivation on waste land is correct, but only from the angle of industrialist or rich people. It is also true in their cases since these people use the land for mono-culture. The other possibilities of income for that land do not hold in their account of input-output.

But the economics of the poor is entirely different. As soon as he gets land, he can start using it from the very next day for some purpose or the other. Even the trees for plantations can be selected in such a way that he will get some income even with 4 to 5 months. It is true that even full potential of income will be realised only after 5 to 7 years. But in the intervening period he will be able to use his labour for other purposes. In this way the poor is not to wait for 5 to 7 years for the income to start flowing on which he can live. There will however be a qualitative change in his situation after 5 to 7 years when the flow of income from the fallow land becomes regular. Then he will not be a resourceless person but will become a person owning a resource. And in this way he will become an equal partner in the new development.

#### The Real Structure of the Programme

14.43 Basically there are four things which are required in any programme, namely ; land, labour, capital and organisation. In the programmes related to waste land or degraded forests land is given by the government and labour is provided by the worker. Therefore, capital and organisation are the only remaining elements. The plea for including industrialists or rich people in these programmes is usually based on this ground that they will provide capital and also necessary organisational input. It is necessary to consider this logic in some depth.

14.44 Let us first take the question of capital. Even industrialists get their capital either from the government or from a bank. In fact capital cannot be considered to be basic in a planned economic development particularly in the case of development of poor. And if we remove all

unnecessary expenses from the programme of tree plantation on fallow land, not much capital except for labour input will be necessary. In this way when even the industrialist invests capital it is on two counts - unnecessary expenditure and wages for the labourers. If arrangement can be made for wages to be paid to the weaker section for work on their own land in this programme, there will be not much requirement of capital.

14.45 When there is such a big difference with regard to the capital investment in the two models of rich people and ordinary people, the choice is clear. There is one more thing. The programmes of rich people not only require much higher capital but even the profit accrues after a long time. But in the case of poor the benefits begin to flow immediately or after a very little time. That is not all. The bulk of the capital in the programmes of the rich people is required for industrial goods while the capital in the programmes of the poor is directly in the form of wages. The investments in the programmes of rich people on both these counts can have adverse effect on the economy. There may be inflation. Therefore the investment has to be limited. But here is no possibility of any bad effects whatever may be the quantum of investment in the programme of the poor. On the contrary, higher the investment on such programme more balanced will be the economic system. In this way there need not be any limit on financial outlay. The programme can be extended at will without any restrictions. It can be hoped that the government or the banks should be able to provide full capital requirement of these programmes of poor with very low capital input. In this situation, participation of the rich in the capital for these programme has no meaning.

14.46 The question now is about need of organisational support for improvement of waste lands. In this case also the organisational experience of the industrialist and the rich people, if at all can be used it can be for external liaison of big projects. So far as the plants and trees are concerned the ordinary people know everything. Therefore, if instead of big projects small schemes are prepared for the poor with small lands, the need for organisation on a large scale will automatically disappear. Thus it is clear that on no count it is necessary to include industrialist or rich people in the programmes of waste land or degraded forests. In fact, their participation in these programmes is harmful. We have seen earlier that these programmes became unduly costly simply because

of the association of the rich people. Firstly, neither the resources are fully utilised and nor full advantage is taken of the nature's force. Secondly, the confrontation with the common man is inevitable in those programmes. In this way there is confrontation both with the nature and the man and the result is that these programmes became very costly. Unfortunately, it is these costly programmes which are taken as models. Then the plea of requirement of large investments is used to conclude that how can the poor take up such costly programmes ?

14.47 The account of poor man's programmes is entirely different. If resources are given to the poor and he is convinced that he will get full rights over whatever grows there, he will be able to do his work without much expenditure. His experience about tree plantation and forests has been very bitter. He has no right even to use the trees standing in his own field. The problems which he is facing in the forests are too many to be told. The most important thing in these programmes will be the instilling a sense of trust about the promises and perceptions of the government. That can be the biggest asset.

#### A Unique and Ideal Experiment of Bhimaram

14.48 A unique experiment of planting trees on marginal and fallow lands is reported from an area around Bhimaram in Adilabad district of Andhra Pradesh. Most of the land here is unproductive for agriculture. The ordinary people have been making a living by working in the forest. A few years back some people in the village thought of making better use of unproductive land by planting mangoes. The people in the village as a group also decided that every single person in the village will be included in the programme. Therefore the people planted mango on their own lands and, in the case of landless, on government land specially assigned for this purpose.

14.49 The people did not feel the need for any financial investment in this programme. Since all the people in the village were participating in this programme, protection of trees became the responsibility of everyone and there was no need of making any expenditure on that count. It was possible that some problems could arise from goats owned by the shepherd.

in the village. But since he was also included in the programme, he sold away his goats and started rearing sheep. Similarly, after all, how much labour is required in planting of trees and after all it was personal work for everyone. Therefore the people of the village decided that they would get up early in the morning before going out for work and look after their trees as if it was a part of their domestic work. Therefore there was no need for expenditure on labour even after the mangoes had been planted. The only thing which they required from outside was the plant material and fertilizer. They manage a loan of Rs. 100 per acre for a bank for covering this expenditure.

14.50 This programme was initially taken in the worst lands on which almost nothing grew. After about four years of this plantation, when people began to get some income, this unproductive land became more valuable. In contrast the land which was considered to be productive earlier began to yield less income after this experiment. In this situation the people were not happy about putting in lot of labour for earning a small income from this "unproductive" land. Therefore in the second phase these people started planting trees on the comparatively better land of the village.

14.51 This simple programme was an unqualified success. There was no reason for its failure. Success has its own message. The people all around saw this success with their own eyes and its news spread far and wide in the whole area. Later, Government departments also contributed to its expansion. In fact, with the coming of the government an element of loan and subsidy got introduced because of which its pace became somewhat slower. But even then, upto now plantations of mango, cashew, ber has covered more than 15000 hac. in this area. The land which did not yield any income or gave them at the most Rs. 100 to 200 per acre is now yielding an income of Rs. 10,000 per acre. The person who was an ordinary labourer till the other day has an annual income of not less than Rs. 10,000. The biggest problem in this area today is that how to make proper use of this big income.

14.52 This experience of Bhimaram is an ideal one, but not the only one. A number of small and big experiments have been taken up in the states of West Bengal, Gujarat and Rajasthan. We have already referred

to the experience of Arabari in Midnapur district (Page 114). But not much attention has been paid to these successful experiments at the national level. They are ignored by describing them as exceptions. On the other hand, the rich people are making tireless effort for creating new jagirs by taking control of all sorts of resources, telling all sorts of tales, making big projects in the name of environment, industry and development. The big projects serve the interests of everyone. Therefore, they are being pushed forward ignoring the field reality, opposition of the people and the real national interest.

#### Karnatak Paper Pulp Limited - A Wrong Example

14.53 An important example about a lease of waste land and degraded forest for industry and its wrong consequences comes from Karnataka.

Two very big leases of fallow lands were given to industrial establishments in Karnataka - one to Mysore Paper Mill and another to Karnatak Paper Pulp Limited. A contract for assignment 30000 hac. of land to each of these industries was signed. The bulk of the proposed lands in the case of Karnataka Paper Pulp Ltd., were 'C' & 'D' lands (C & D lands are lands under management of revenue department outside reserved forest). It is clear that the ordinary people must have been depending on these lands for meeting their day to day requirements. The need for giving the lease to Karnatak Paper Pulp Ltd. arose because the State government had promised to supply two lakh tons of raw material every year when M/s Harihar Polyfibres was established. In view of the depletion of forest and also in the context of the new thinking in the management of forest, the State Government decided that the concerned industry must be told to make arrangements for producing their own raw material according to their needs.

With a view to achieve this objective, a new company Karnatak Paper Pulp Ltd. was established in which State Govt. has 51% share. Thus the main objective of this company in the joint sector was to produce raw materials for M/s Harihar Polyfibres.

14.54 A 40 year lease of land was assigned in favour of the company in 1977. The land in respect of this lease as far as possible had to be unproductive C & D lands. In case C & D lands were not available the degraded forest land could also be given. According to the contract the company was obliged to plant 5% trees for meeting the fuel wood and

fodder requirements of the people. The company would sell fuel wood to the forest department at local rates and the forest department in its turn would sell it to the people. The lops and tops of the trees, which remained after working the forest, would be left on the spot which the people could take according to their need. The government was entitled to 12½% share of the gross produce from this land in lieu of the revenue.

14.55 As the Government started transferring land according to this agreement and the people came to know about it local resistance started building up. In many areas no pasture land was left after the land was given to the Company. Afterwards trenches were dug around it so that neither man nor animals could enter it. Wherever the boundaries were very near the village people were in big trouble. The company obsessed with its own programme did not care to look at the problems of the people, nor did they give any attention to the reality in the field. It is clear from the papers concerning this dispute that the company in a number of cases took over lands unilaterally in an unauthorised fashion. In any case, the local resources are being snatched away from the people without asking them and without listening to them simply because the land has been entered as government lands. They are putting up a stiff opposition.

14.56 The agreement between the Government and the Company on the face of it appears to be fair. It also gives an impression that the interests of the people have been taken care of. But many things have been ignored in this. The first thing is that if the Government decides to give land of a village to some company, in that situation it is only the village people who can tell as to which land can be given and which cannot be given. The way the Government has entered into this agreement and transferred these lands, it is clear that the fact that some people live in the areas where the land was being assigned and they also have one needs of their's, has been completely ignored let alone the fact of their rights over them.

14.57 Another thing which is usually intrinsic to such agreements is that there is a tendency to draw conclusions on the basis of figures and indifference to any objective assessment of the possible profit and loss. So far as the profit and loss of the people are concerned, the

first important this is that the people will lose their resources today and the benefit, if at all, is likely to accrue only when the trees grow and their turn for felling comes the second important points are about "who is the loser ? and "who is the gainer? As I have said a number of times, in all these cases the maximum loss falls on the poor people. In this case it is possible that some benefit may accrue to the local community. But it will in no way solve the problem of the poor. Again the person who has no land, no cattle and perhaps his dependence on this resource is maximum, he will have no place in the new context. Since he has no cattle he cannot hope to get any benefit in future even if fodder trees are planted according to the agreement. Today he is able to manage somehow by bringing roots and shoots or collecting firewood from the forest. This will become nonavailable to him immediately, but he has no hope for getting benefit out of the new system even in future. In the new arrangement the firewood will be sold departmentally and the government will fix its rate. In this situation both the fuelwood collectors and the ordinary people will be losers. The fuelwood collector will not be able to bring fuelwood from that area. But even other poor today can get their fuel wood for which the only input is their personal labours, he has not to pay any cash. In future he may have to pay in cash according to government rates. Where from will he get money for making that purchase ?

14.58 They entire agreement of the Government with the Industry is in a way symbol of the selfishness of the system and their contempt towards the common man. The industry will have lops and tops after felling the trees "leavings after a grand feast ; and a feast for the paupers". 5% of the trees will be for fuel and fodder trees. But how will the people get them whom knows ? Till now no plantation of fuel and fodder trees has been taken up. This all is as yet only on paper. The government will get 12½% of the total produce in lieu of their revenue. What principle after all has been adopted in this sharing ? The people get 5%, the Government get 12.5% and the remaining 87.5% for the Company. After all what contribution is there on the part of the Company in the creation of the forest wealth ? Is it Grabbing the wealth of the people by driving them away with the help of Govt. ? And then to prove that the Company has produced something by showing a variety of unnecessary expenses as investment.

14.59 The nature is quite benevolent in the Western Ghats. Where can get such an example of founding a new State by grabbing such an extensive natural wealth in the name of industries ? The resources providing subsistence to the people are being snatched away in one village after another, simply because their rights have not been recorded. These village communities and the poor living these do not exist so far as these contracts are concerned. After all can the village communities how be deprived of their rights over the natural resources ? Their life depends on them. Even if it is accepted that the use of these resources was necessary for industry and development, was it necessary that the entire profit should go to the capitalist ? What difficulty was there in making these village communities and the people who were dependent on those resources as partners in that industry ?

14.60 There is a 'conspiracy of silence' in our country on the question of partnership in the benefits of development and use of natural resources. Not to talk about it is the best method of self defence. Otherwise, if a dialogue is started the entire game of the industrialists will be exposed. If the sharing of the government, the local community and the industry in the benefits of development is fixed properly and rationally, the claims of the community on the benefits relatable to the use of natural resources cannot be ignored. In that situation the industry will have to be content with the profits of purely industrial activities. Today this position is not acceptable to them. They have become used to wind-fall profits without effort. The gains of honesty cannot but be limited. But they are not satisfied with then. So far these people have been taking away the raw material from the forest at throw away prices and have been making phenomenal profits. Now on the same plea a lease of 30000 hac. as usual ; and a new jagir in bonus.

14.61 In this way it is clear that the entire system of assigning waste land to the industries is anti-people. The interests of the poor particularly the Scheduled Castes have not been kept in view in these agreements. The State has played with the right to life of their people. An alternative equitable system should be established immediately accepting the right of the local community on the resources and terminating all earlier arrangement totally so that the local community, particularly the poor, become partners in the industrial activity. This is not only the moral duty of the State but their Constitutional obligation.

## The Right Path for Social Equity and Environmental Development

14.62 In this way it is clear that inclusion of industrialists of waste land and degraded forest is a big conspiracy against the bulk of the poor in the country. It is true that these resources are getting degraded. Whatever the poor people are getting from them cannot continue for long. But depriving the poor of their right only on that count is not justifiable in any way. The degradation of these resources is not necessary. They can be improved with the partnership of the people. Today with the advances of science and technology has made it possible that the lands which are yielding nothing today can yield atleast this much so that even a small piece of land can be sufficient for supporting the life of an ordinary person. But the question is as to what strategy should be adopted so that this new found power of science and technology strengthen the hands of the poor ?

14.63 I had stated in the previous report in categorical terms that all those occupations in which the people have been working according to their own style are getting out of their hands with the interoduction of new technology. That is now all. The entire potential of development which the people in the traditional occupations could have got, is being grabbed by the rich people. All sorts of means of production are coming under their sway and the old artisans is now becoming a mere labourer. Unfortunately science and technology are under the seige of moneid people. The scientists and technicians, in association with the vested interests, have become instrumental perhaps without knowing, in the poor bein denied partnership in new development and have done a great damage to them.

14.64 The same situation is about waste land and degraded forest. Nobody bothered about these resources so far because either they were unproductive or they were located in inaccessible areas. Therefore, if a poor person was linked with them and making a living, nobody had any objection. But in the new phase when these resources can yield big dividends, everyone is after them. These resources are the as base of the poor for making a living. But unfortunately they do not have a formal right over them. Therefore, the government can do whatever they like in their case. The rich people are trying to establish their claims in the name of development and under the cover of law.

### The Only Hope and the Last Opportunity of the Poor

14.65 In this critical phase in the history of development, an opportunity has come when the poor who has been dependent for his living on the natural resources, albiet in related conditions, but had not rights over them, can be put to such a new use which can provide him an opportunity for leading a good life. If their right to make a living from these resources is accepted, they will have something which they can call as their own.

14.66 If this objective is to be achieved it will be necessary that industrialists and rich people are strictly kept out from the programmes of the waste lands and degraded forest. These programmes must be prepared around those people who are prepared to work with their own hands. The possibility of coexistence of both the poor and rich in the same programme must be rejected openly out of hand. The right of a person on waste land can be limited to its use. After all he is just making a living from it. The government can provide full support - financial, technical, organisational for the programme. And if the production of these resources is required for an industry these people working with their hands should be come partners in that industry itself. In this way the poor man will be able to become partner in national development. But if on any account whatsoever, this opportunity of partnership of the poor in the national economy is lost under the pressure or otherwise of vested interests then he will remain where he was. If the current policies continue, he will lose even that fragile support of waste land and degraded forest. And on the other hand, a new species of neo-jagirdaries and neo-zamindaries would have been created who may dominate the entire national economy. Thus a new era of zamindaries and jagirdaries will begin. Its form will be different. The signs are clear. Therefore immediate effective action carefully planned is necessary.

14.67 These marginal resources comprising the waste land and degraded forest are the last hope of the poor and the only opportunity for him. If the 'open loot' of these resources by a few persons with the support of scientific advances and financial resources is not checked in time that last flicker of hope for the poor will get extinguished and the last opportunity of leading a honourable life will have slipped through his fingers for ever. But in this time of great tragedy there is a ray of hope. Perhaps he may not accept this injustice.

## COMMAND OVER RESOURCES - 8

WATER

The perception about water a resource like air, so far has been that it is a resource which is easily available to everyone. Therefore, there was no need for paying any special attention to questions about the command over this resource and its use notwithstanding its vital importance for life. Secondly, the use of water was limited largely for drinking purposes and also some irrigation. Moreover, the use of water depended on an individual's capacity for personal labour and the ordinary technology which was within easy reach of almost everyone. The result was that during this phase there was no scarcity of water as a resource. Moreover, it was not possible for anyone to acquire control over this resource through money power. Everyone could use it according to his own need and his labour input. The person who wanted to get water for his field could dig a well, lift water from a river or stream and take it along a channel over long distances too. Some rulers and Zamindars occasionally constructed a few irrigation projects, which involved a lot of investment, so that water could be collected in a reservoir or even otherwise and could be taken in a planned way from one place to another. But such projects were exceptions.

Entry of Capital in the Use of Water

15.2 A sea-change has occurred in the social side of water use with the introduction of new technology for its use. With the coming of pumping sets, water can now be drawn from great depths in the ground. In the new setting, the use of

water would depend on the power of the machine, instead of the hard manual labour of the concerned person. The right to use water, thus, suddenly started gravitating into the hands of those persons who could command capital. The water underground does not recognise field boundaries, it flows unobstructed. With the continued drawal from irrigation wells and commissioning of engine pumps in large areas, the level of sub-soil water has started going down. The ground water has gradually got out of reach of the person who earlier depended on his own personal labour only. Thereafter the extent of drawal on water depended on the size of the machine--bigger the machine greater the command. That is not all. In some areas so much water has been drawn out that almost the entire stock of water in the local area has got exhausted.

15.3 With the growing importance of capital in the use of water, the social context of use of the water has also changed. Its use now became a matter of simple arithmetic of investment and profit. For example, in many areas people used available underground water for raising profit yielding cash crops. They showed no concern for the consequent scarcity which it caused of even drinking water in the same area. In the National Water Policy, higher priority has no doubt been given to drinking water. But it is still a mere idea. The issue of social equity in the use of water has not really come to the fore so far. Therefore, the truth is that the rich people have acquired control over underground water. On the other side, the development of agriculture in our country is largely irrigation-oriented. Therefore, whosoever is able to acquire control over water can get other benefits of development as well. In this way, the power of the well-to-do in our country has increased manifold. On the other hand, the small farmer, who could get some water with his own personal effort, has been deprived even of that small privilege. He is gradually left with no other option but to leave agriculture and become a landless labourer.

#### Big Irrigation Projects and Right over Water

15.4 Similarly, a basic change has occurred in the right over flowing water and its use with the commissioning of big irrigation projects over the rivers. The first effect

of big irrigation projects is that the state and associated institutions acquire authority over the flowing water which so far vested with the person who owned the land on which water fell or with the community. The new system in the process also acquires control over the distribution of water, after it is collected in a big reservoir. The distribution now exclusively depends on the will of the executive. In this scheme of distribution, the people in the benefited zone receive huge benefits. But some people lose everything - their homes and hearth, their land and fields in the process of execution of such projects. That is not all. After a dam has been constructed on a river, the people living in the down stream are denied the benefit of water which they had been deriving till then. Consequently, their traditional economic system collapses. Moreover, in many cases, the seasonal migration of fish either ceases completely or is drastically reduced after there is obstruction in the river flow because of the dam. For example, the arrival of fish in the upper parts of the Ganges has been greatly reduced after the construction of Farakka Dam and thousands of fishermen, who earlier were making a living by fishing, have lost their source of livelihood.

#### Right of People in the Catchment Area of Big Projects

15.5 There is one more issue concerning big irrigation projects which requires special attention. When a big dam is constructed, it becomes necessary that the upstream water is received in the dam without any obstruction. The catchment of big dams mostly comprises hilly and forests regions and most of these areas are inhabited by the tribal people. The benefit of these big irrigation projects largely accrues to the non-tribal plain areas.

15.6 There can be no objection if the resources which are not being used in one area can be used for the benefit of another area. But an important question about these projects is how to ensure that water in the catchment of these rivers is made available and that too continuously to the dam and its distribution system. Therefore, in some cases restrictions are placed on the use of water in the catchment of big projects. For example, there is a law in Maharashtra, according

to which the people in the catchment of a big dam can use not more than 15% of the total available water. Consequently even though a number of dams have been constructed in Nasik, people living in periphery of those dams cannot install pumping sets for irrigation in their fields while the same water is taken to distant places through long long canals. This may be considered as necessary in the present system, but it cannot be said to be a just arrangement.

15.7 Here we face some basic issues of principles. It is true that according to present reckoning the tribal areas are backward. Therefore, water is not being used where it touches the ground. In fact people there are not in a position to use it. But, if tomorrow these people feel the need of using that water, then it will be their natural right and how can they be deprived of that use? It is difficult for big irrigation projects to accept this simple logic because heavy investments are involved which cannot be allowed to go waste. In this way, we again see in the final analysis the phenomenon of the right over resources being consolidated on the strength of money through the big projects. It will be necessary to change the entire legal structure to remove this anomaly.

#### The Basis of Water-Use - Money Power, Profit or Social Equity

15.8 The next important question, alongwith that management of water resources, concerns the people's right to use water. The present practices about water use are objectionable on many counts. The rich people have acquired control over underground water. So in their perception water has no price as water. The price of water for them represents only the expenditure incurred in drawing it from the well. On the other hand, in the case of canal irrigation and other government projects, the entire cost is borne by the state. Even here there is no price of water as water. If a question about the price of water is raised, it is limited at the most to meeting the expenditure of collecting it and its distribution upto the field level. The total cost of irrigation projects can be realised by imposing a suitable levy for irrigation on the farmers. But the irrigation rates for variety of reasons

are so low that it is not possible to meet even the expenses of the maintenance of these projects. Therefore, people get water from government irrigation projects almost free.

15.9 The practice of providing irrigation at a low rate was first started in the form of government assistance for growing more food. This later on became a convention and then a vested interests. Many consequences of this practice are not quite healthy. The choice of crops in irrigated land today depends exclusively on considerations of investment and profit. When water is free, the psychology of quick return is dominating. The result is that the best irrigated lands are devoted in some places for growing opium and tobacco and elsewhere for groundnut and sugarcane. Here a grossly anomalous situation has arise in the use of an important resource like water. When there is scarcity of water in the country, the only proper criterion for the use of water can be the national interest and social equity rather than individual profit. In this situation as a matter of principle water should be made available only for those crops in which the ordinary people, particularly those belonging to the weaker sections, are able to derive maximum benefit in terms of total production with minimum water use.

15.10 So far it is the plain areas in our country which have been at the centre of agricultural economy. The entire development of agriculture also has been limited to these areas. Even within these areas, attention has been focussed primarily on wheat, paddy and cash crops. The emphasis in new technology also has been mainly on these crops and all sorts of investments are also being made available for them. To provide water to these 'advanced' areas in any way and from anywhere, has been accepted almost as axiomatic. Once some people have the taste of unearned profit, they have no hesitation in demanding the same as a right. The system also supports them - that is also the simplest course as well as the easiest.

15.11 On the other hand, many of those who have unproductive lands or are marginal farmers can grow only coarse grains. These people have neither got the benefit of irrigation nor

that of new technology. Not much attention has been paid to this fact that if these crops can get even one watering, the benefit in terms of increase in production will be much higher compared to that in the crops which need more water. And thus many more people can be benefited. Similarly, if water becomes available for those areas where there is scarcity of water, it can be used for growing trees which will be most beneficial both in terms of environment and commodity-production. For example, the canals in many projects may pass through undulating desolate areas for ten to twenty or even fifty kms. carrying the water to its final destination of good plain lands for irrigating crops like wheat, paddy or sugarcane. Why can cultivation of trees not be taken up in the extensive lands on both sides of these canals? These areas are backward and many of them are tribal areas. So far these backward regions have been used for exploiting their resources largely for meeting the demands of advanced areas. No one is concerned about their potential for the people living there. The results are predictable. Thus, there is clearly a need for basic change in the whole thinking about use of water for irrigation. A resource which is scarce compared to the need for the same, should be used in such a way that the benefit per unit of that scarce resource is maximum. Such a policy is bound to lead to a change in the distribution pattern of water, it will become available to a much larger number of people which will imply greater social equity.

#### Equal Right over Water - Pani Panchayat

15.12 A revolutionary initiative has been taken in some areas of Maharashtra, concerning the right over water. The rain fall in an extensive region around Pune is rather scanty and the area usually faces water scarcity. The vegetation has got depleted and few trees are left. Consequently, as soon as rain falls on the ground, water does not percolate but flows off immediately. With a view to meet the serious situation, some people in the area prepared a plan and decided to capture the water where it touches the ground and to use it optimally.

15.13 When the people started preparing a detailed scheme

for giving the idea a practical form, an important aspect of the situation came up for discussion. Drought was a problem of the whole village; all the people are affected by water scarcity. Therefore, meeting the challenge of drought cannot be the responsibility of only some people; the whole community must be involved. Consequently they decided that everyone in the village will join hands in this effort. But having accepted the need for capturing rain water and retaining it, the next question was about the right over the water which they may be able to retain. So far as the use of water for the 'nistar' of the common man was concerned it was clear that once water was stored everybody would be benefited. But besides 'nistar', the main benefit of their scheme of water storage will go to those people who owned land. The distribution of land in the village was highly unequal. Some people had lot of land, while others had only a small piece and some had none. Therefore, if everyone joined hands for meeting the challenge of drought, as the things stood everyone would not get the same benefit out of their collective effort.

15.14 At this stage, some people thought of a new idea. They suggested that the question of unequal ownership of land should not be raised in tackling the problem of drought. It was possible that the people in the village may get divided on that issue and therefore the whole programme may be in jeopardy. An alternative could be that everyone in the village could have equal right over the water which they all were planning to check and collect together as a community. There was no difficulty in understanding this proposition. After accepting this principle, the people in this area have established what are known as 'Pani Panchayat'- one pani panchayat for each village. Most of the villages included in this experiment have taken up lift-irrigation schemes. There are a number of local variations in the scheme of sharing of water. But the basic principle is accepted by all, that is, all the people in the village have equal right over the water for irrigation from the project in the village. Therefore, a landless person can either sell his share of water to a land owner or he can use that water in a field in accordance with an arrangement with land owner in which both of them can share the benefit. This new idea about right over use of

water has been generally welcomed everywhere. But the area of this experiment has not grown significantly as was expected in the beginning.

#### An Initiative in Prithvipur as well

15.15 Another initiative in a village Prithvipur (Vijaypur Tehsil of Sabahantha district) of Gujarat State about the use of water is also notable. All the people in this village belong to scheduled tribes. There is scarcity of water in the village. The village people decided to dig a well through mutual help. Everyone in the village contributed equally in the form of labour for this purpose. But for constructing a well, some financial investment is also required. They requested the government for assistance on collective basis. But it was not possible for the administration to give assistance to them as group. The people, therefore, decided to present the scheme of well construction in the name of one person only. However, it was clear that it was a collective effort and that only the name of the person was being used for getting the assistance and that whatever would be received from the government will belong to the community as a whole. The community will have full rights over the well. And the responsibility of repayment will also be that of the community. In this way, the irrigation well was completed by the people with collective participation and some government assistance.

15.16 What followed the commissioning of this irrigation well was remarkable. The people took a unusual decision about the use of water from this well. There is no need of irrigation in kharif. Therefore, they decided that all the people will continue as usual with kharif in their respective fields. But earlier, they did not grow rabi crops which became possible after the construction of the well. Here two points came up for consideration. Firstly, one single well could not irrigate all the fields in whole the village. Secondly, the command of the well was also limited and not every one in the village had land in its command. But the new potential of well irrigation was created by all the people in the village working together. Therefore, the only proper course would be to share equally the benefits from the new source. The people decided that all the people in the village will do rabi cultivation collectively and thus use the irrigation

well for common good. Whatever may be the formal position about the ownership of the land thus brought under irrigation everyone in the village will have right over it for rabi cultivation.

15.17 Thus, a number of significant things happen in this village. Firstly, the people did not accept the individual-oriented concept of development usually adopted by government and gave one of the government schemes the form of community development at their level. Secondly, the community also took the initiative to bring about equitable use of land as they were faced with the question of equitable right over the water which they harnessed collectively. Thus, everyone in the village became an equal partner in the benefits of development. This experiment in principle is one step ahead in the process initiated with the experiment of 'Pani Panchayat' referred to earlier.

#### A Possible Future Course

15.18 A special feature of the experiments of Pani Panchayat and Prithvipur has been that the people have accomplished the tasks on their own; the outside assistance was either not sought or where it has been sought, it was treated as secondary. Therefore, the first point has been the initiative of the people and their own contribution. That is why the participation in these programmes of all people in the village was assured from the beginning. They equitably distributed the benefits according to their understanding and did not find any difficulty in doing so.

15.19 But in contrast to these experiments, when an irrigation project is planned by the government the thinking is just the other way round. Firstly, so far the very idea that social equity should be an important consideration in the distribution of water from state projects is not there. The irrigation projects are also an integral part of the current thinking in development in which competition for benefits amongst individuals has been accepted as primary and where production comes first and social equity the next. That irrigation will lead to increase in production is enough for the planners. In some cases, however, as in the case of tribal Sub-plans, priority is given to those projects in which the bulk of the benefited land belongs to the tribal people. Similarly,

with a view to extend the benefit of irrigation to more people, the Government of Maharashtra has framed regulations, according to which water for sugarcane cultivation is guaranteed only for a limited duration in the year and not all the year around. This regulation is being opposed by rich farmers.

15.20 In this way, the distribution of benefits of irrigation from government irrigation projects is beset with innumerable pulls and pressures from all sides at every stage. In the first instance, the influential persons get irrigation projects sanctioned for their respective areas. In this case no investment other than intense lobbying from their side is necessary. Where a project is commissioned, the area gets benefited without any one in the area bearing any cost. Once an irrigation project is sanctioned, the focus of tussle shifts to distribution of its benefits within the area. In such a scheme it is accepted as normal that some people will get the benefit, while others will not. No body can do anything in this regard; everyone is helpless. Therefore, whosoever comes within the zone of consideration of receiving the benefit from irrigation, be it big or small, it is taken as a right. Since no body has to pay anything from his side the claim on the benefit per se becomes an issue. The person who may get the benefit is not prepared to accept a co-sharer in that.

15.21 In fact, this is the situation in all our irrigation projects. The people in the benefitted zone of big projects are recipients of wind falls. Yet they are not prepared to do anything whatsoever even for those people at whose cost they are benefitted. To give relief to these affected people is the responsibility of the government. That is not all. Not even a comprehensive law covering all aspects of distributive justice has been thought about so far. Even though laws have been enacted in Maharashtra and Madhya Pradesh but so far as their implementation is concerned, less said the better. The primacy right on the use of rain water should be of that person on whose land the water falls. When it comes to harnessing the water after it has touched the ground or drawing it from underground for economic use, the first right should be of the local community. The experiments of Pani Panchayat and Prithvipur can be taken as a model in

this regard.

#### Right of those Depending on Water for their Living

15.22 There is yet another aspect of rights over water resources and that concerns certain groups like the fishermen who depend on water for their living. The earlier situation in their case was also quite simple. These people depended on their personal labour and their personal skills for using the water as a resource for making a living. The fishermen are experts in fishing and can also take the risk of venturing in the water. The situation on the sea coast was still more simple. The water resources were extensive. There was not much competition for its use either. The accomplishment of a person depended on his labour and skill.

15.23 A qualitative change has occurred in this situation with the use of new technology in occupations related with water. For example, with the introduction of power-driven boats, the resources which were under the control of fishermen came to be commanded by those people who could invest in big boats. The thinking of these investors is also quite different. The water resource and the fish are not their means of livelihood. So far as they are concerned, fishing is one of the numerous industries with its distinctive input-output profile. Once they recover their capital, they are not bothered for how long they can continue to make profit thereafter. Therefore, in a number of cases they did not even think of ensuring that the catch is not so large that it may endanger the species itself. The result was that after the introduction of new technique and bigger boats the gross production of fish in a number of areas has sharply declined. There has been some change in the policy in this regard recently. But even then it cannot be said that the problem of right over resources of the ordinary fisherman has been resolved.

#### Boatmen on Rivers - Backlash of Development

15.24 The problems of boatmen living on the banks of rivers and depending on them for their subsistence deserve special mention. The boatmen, or the people belonging to 'Kavat' community, have been making a living from rivers in a variety of ways. These people ordinarily depended on fishing. But

they also ferry people across when rivers were in flood and managed the ghats after floods receded. Some of them were also engaged in river transportation by boats over long distances. Some others amongst them took to seasonal agriculture and raised special crops in the river-beds after the flood.

15.25 The life of boatmen has been adversely affected in a variety of ways in wake of new development. Firstly, the availability of fish in many river has been drastically reduced for a variety of reasons. In some cases, it is because of pollution and in some other cases, the passage of fish has got obstructed on account of construction of a barrage or a dam. That is not all. In many places, the river systems are also a part of Zamindaris. Therefore, the fishermen have to pay heavy levies to the Zamindars for fishing. Thus even though Zamindari has been abolished, the flowing water of many rivers has not been liberated from the feudal stranglehold.

#### Ganga Mukti Andolan

15.26 The movement for liberation of the Ganges (Ganga Mukti) in Bihar is particularly notable in this regard. The rights of Zamindars over river water in Bihar ceased with abolition of Zamindari. But the Zamindars in some areas like Kahalgaon of Bhagalpur district did not accept that interpretation of the law and took the matter to the Court. The High Court gave a decision to the effect that Zamindari Abolition Act concerns land only and could not be deemed to be applicable to river-water. The Government of Bihar, instead of amending the law suitably, preferred to go in for appeal before the Supreme Court. This legal tangle has helped the Zamindars to retain their control over the water of the Ganges.

15.27 The fishermen started a movement in 1982 for the liberation of the Ganges against the continuance of unjust Zamindari over the water. The fishermen living around Kahalgaon some three years back unilaterally declared, as a part of this movement, the liberation of the Ganges. They have stopped paying the taxes levied by the Zamindars. As I have already stated about the other resources, wherever the use of a resource is linked with the earning of living by a people, continued

use of that resources becomes their Constitutional right, that is, their right to life. In the context of the situation where the government has not taken any initiative for protection of their right to life, the action on the part of the people is proper and in keeping with the spirit of the Constitution. I am happy to note that the State Government has recently passed a law abolishing the rights of the Zamindars over the water. This law, however, has not come into effect immediately.

15.28 But the Ganga Mukti Andolan, which was started with the question of Zamindari, is now concerned with much broader and some basic issue. The use of new techniques (cloth net) for fishing in the Ganges and indiscriminate commercialisation may lead to extinction of fish in the river. Similarly, the use of chemical fertilizers and pesticides in agriculture is also having an adverse effect on fish. The arrival of hilsa, jheenga and other fish from the sea has stopped with the construction of Farakka Barrage. It is thus clear that the life of the ordinary people is highly intermeshed through a variety of visible and unvisible threads. When due attention is not paid to these subtle links in the process of development, then no one can be sure about the point or points at which the development may disrupt that delicate balance and spell disaster for some people or even all.

15.29 This is so far as the fish in rivers are concerned. But the economy of the boatmen, which depended on the river system, gradually became increasingly shaky under other influences. The transportation of goods shifted from river to road as a part of the development process. The traditional occupation of boatmen of transporting goods by large boats therefore, collapsed. The question of any rights being affected in this change over does not arise at any level. Therefore, nobody thought of looking at the process from their side.

15.30 In many States, right to levy taxes on ghats of rivers has been devolved on local bodies. This implied that the right of boatmen to earn their living by ferrying the people got extinguished. The ghats came under the control of the contractors and the 'Kevat' became a mere labourer of the contractor. The contractors commissioned big boats for ferrying

and set up bridges of big boats across the rivers. In either case, the levy of the contractor became inescapable; everyone crossing the river either by boat or by bridge must pay. In this whole process, the traditional rights of the 'Kevat' related to river-crossing disappeared. Now they have only one destiny and, that is, to work as an ordinary labourer for the contractors.

15.31 The right of the people in river-bed cultivation also met a similar fate. In some cases, the Zamindars grabbed these lands and in some cases other people did the same. The 'Kevat' traditionally depending on the river-bed cultivation watched helplessly. The termination of rights over the water resources in the river in this way led to the collapse of the economy of the boatmen. These people are in a real bad shape. The Ganga Mukti Andolan has taken up this issue in its totality. Similar is the situation of boatmen on other rivers. Many of them are fighting for their right to make a living from these resources. It in reality is their struggle for the right to life enshrined in the Constitution.

#### Rivers and Tanks in the Tribal Areas

15.32 There are no separate castes like fisherman or 'Kevat' in the tribal areas. All members of a tribal community use small rivers and tanks in accordance with their tradition like all other resources in the area. But their traditional rights have been largely ignored by the new system. In many States, the rivers and tanks, in principle, have been accepted as sources of income of local bodies. The institutional control over rivers and tanks did not have much significance for the people in the beginning as was also the case with the extension of State's authority over the forests. In fact there was no one to interfere with the traditional use of these resources for quite some time particularly in the remote areas. But the situation gradually began to change. There were two reasons for this. Firstly, the local institutions were obliged to increase their income for meeting their expenses and for that purpose they started auctioning rivers and tanks. Moreover, a number of programmes were also taken up for the development of these resources. In many cases cooperative societies were organised so that there was clear cut responsibility for increasing productivity and incomes by

making suitable investments. In either situation it was a modern institution which acquired control over the local water resources.

15.33 Both the Co-operative Society and the Gram Panchayat have separate identities as formal institutions which are distinct from the people. Therefore, their immediate objective in many cases becomes raising their own income. The direct benefit which the people have been getting from these resources in that situation becomes a secondary issue. In this way, these institutions themselves become vested interests and even the rights of the ordinary people are called in question.

15.34 A state of confrontation has arisen at a number of places between the people and the formal institutions. The most regrettable example of such confrontation is from Santhal Paraganas of Bihar. A big dispute had arisen some three years back on the issue of fishing rights in tanks between local community and panchayats. When contractors started indulging in high-handed methods, the people fiercely resisted them. This led to a law and order situation. In the end there was police firing in which 13 people were killed. The issue of fishing rights subsided for the time being. The contractors receded and there was no auction in the following year. An annual mela is held at that spot in the memory of the martyrs. But no formal decision in favour of the people on the question of rights over the tank has been taken; in fact, there has been no thinking on this basic issue.

#### Big Reservoir - Jaisamand of Rajasthan

15.35 The issue of fishing in rivers and tanks is an important cause of dissatisfaction amongst the people throughout the tribal area. But the situation becomes still more incongruous wherever large reservoirs are constructed. The case of bringing fishing activity in Jaisamand of Rajasthan under formal system is notable in this regard. The most important consequence of bringing fishing under government supervision has been that the right of fishing has been auctioned and contractors have been introduced. The contractors in a bid to maximise their profit sell their catch in distant towns like Calcutta. The income of government has also increased. But in this process the local community suffered the most for whom fish

almost disappeared and it became increasingly difficult to get it at any price. Later on, with a view to remove middlemen, the management of fishing was entrusted to a cooperative institution. But there was no basic change in the local situation. The main objective of cooperative institutions is after all commercial. Of course, fishermen have been given a significant wage rise recently.

15.36 The basic question which arises with regard to the management of resources is again the same, that is, should the management of even those resources be put entirely on commercial lines on which the people have been depending for their food and nutrition and over which their rights have been acknowledged traditionally? It is clear that commercialisation in such a situation is not justifiable. An arrangement in a similar situation had been worked out long time back in the case of Dudhaba Dam of Bastar in response to the demand of the people which is noteworthy. The first point, which was accepted, was that the use of the water resource for fish culture should be under the supervision of the local community. Secondly, the local community should continue to have the right over the fish produce and as far as possible the produce should be used within the area. Only that quantity of fish should be allowed to be exported which is in excess of the need of the local people.

15.37 Unless the situation specifically warrants, not more than 50% of the total fish produce from tanks and rivers should be allowed to go out of a local area. Special attention should be paid to the need of the people living on the banks of rivers and tanks. They should have a special right to fish for their personal use. Special attention should be given to the nutritional needs of children. In this way, in principle the management of a resource like water should be in the hands of the community. If the management is entrusted to formal institutions, the entire working of the institution should be under the supervision of the local people.

#### Big Establishments and Right Over Water

15.38 There is a qualitative change in the matter of rights over those resources like water which are essential for life.

When big projects are established in an area, they begin to use large quantities of water and discharge affluent of similar dimensions. Wherever big project are set up, in many cases untreated used water is released in the river system. The source of drinking water of the people along the river, thus, becomes unusable and non-available to the people. Some alternative arrangements can be made for drinking water for the people. But what happens to the animals is nobody's concern. The animals fall prey to a variety of diseases and become disabled or die. Consequently the economy of the people is shattered.

15.39 Similarly, big towns collect water from a large area for meeting their demands. In this process, the people who had been depending on those water-systems are adversely affected. They are deprived of their resourcebase. For example when a road is constructed the normal course of water gets changed. The fields which earlier got water in plenty face water scarcity. In many cases, the life of people becomes a drudgery.

15.40 The people around Jaisamand in Rajasthan are raising a very important question. According to them after all the reservoir was constructed by their ancestors and its foundations were built on their sacrifice. If it is so, how can its water be taken to far off places for meeting the possible needs of the growing towns without their consent? Is it necessary that big cities should continuously grow like this? Is it not possible that the development is planned for locations/regions where resources are available? There is only one reply to all these questions. The more centralised control over a resource like water greater will be the authority over it of powerful people and, by the same token, the ordinary people will become dependent on their sweet will. It is only the authority of the community over natural resources which can become the foundation of an equitable socio-economic system, that is also an essential condition for creating an egalitarian society.

## DISPLACEMENT - 1

General IssuesTwo Early Forms of Displacement

We have been discussing the question of command over resources of the people and their use and the associated laws, rules and conventions. The main issue in all these was that the people are being deprived of the very basis of their living. In some cases this is being done by stronger people, in some cases by better off sections of the society and in some others it is the government itself or its establishment. This process even otherwise had been continuing from time immemorial. The members of the Scheduled Castes, who comprise the backbone of our agriculture, might have been the owners of the land which they cultivated at some point of time in the past. Their lands must have been taken away by the strongest sections at some stage in the history. These people however, even after they lost their lands continued to be a part of the village economy. They were also assigned a specific position in that economy; they received in lieu of their labour a specific share, even though quite low, in the produce of the village. There was no doubt stratification in relation to the rights of different sections of population over the resources, but all of them continued to be an integral part of the same system.

16.2 The deal in respect of the tribal people, however was very different. These people have been living in the forests and hilly regions. They reclaimed land in these areas for agriculture through real hard work. But as the area which they inhabited became prosperous and more accessible, other people came in and gradually occupied their lands forcibly. And the tribal people, who claimed these areas for human settlement after taking all the risks were obliged to move

on further, deeper into the forest. This process of displacement of the tribal people has been continuing for centuries and is still continuing. There was no law and no order in this process of displacement. There was only one equation in every case - which one of the groups was more strong. It was stronger men and more powerful communities who became the lords of the land and other resources. Amongst others only those people could retain their ownership of land only in those areas which were beyond the reach of stronger people or the land itself was such which was not wanted by them.'

16.3 A new phase of displacement started during the British period when the State started establishing its authority over the natural resources. The biggest displacement in our country was effected with the establishment of the authority of the State over the land and with the bringing in of a variety of intermediaries like Zamindars and Jagirdars in utter disregard of the rights of the people. But in this process, the people were not physically disturbed; most of them continued to live in their original places. The first dreadful displacement which involved forcible removal from original places, started in the tribal areas in the last century after the enactment of the forest laws. That process is continuing even today.

16.4 With the establishment of the authority of the State over natural resources, the authority of the community was extinguished. After the State's authority over the resources was established, the British gave away some of those resources to individuals with private ownership rights. But it is axiomatic to state that whatever rights are bestowed by an authority, can also be annuled and taken back. The British people were beholden operate in accordance with laws. Therefore, they made laws for conferral of rights and also their annulment. The laws and rules made at that time for taking over and management of resources have remained, more or less, unchanged even today.

#### Resources, Property and its Exchange Value

16.5 The most vital thing which happened in this process was that the nature of resources including land itself got transformed. When the British took them under the State's

authority, they became property. Thus, when some people were given rights over these resources they in a way, became owners of that property. In this new thinking, the tradition of our country that the resources are means of livelihood and not property was ignored. When all resources including land became property it became necessary to make a provision for its valuation and payment of money to the owner under the law which was enacted for its acquisition (Land Acquisition Act 1894). These provisions were as routine as would be expected to be followed in a bargain for purchase of property or auctioning a Zamindari for non-payment of taxes. It was forgotten while making these provisions that the basis of life of a person cannot be priced and become an item of ordinary sale. Here was the root and the beginning of all anomalies whose consequences are being faced by the ordinary people today.

#### Willingness or Otherwise for Transfer of Land

16.6 There is another aspect about the law concerning acquisition of land which is notable. It was expected at that time that if someone required land for a personal purpose, it was not necessary for the law to intervene. The person who wanted to take land could negotiate the transfer directly with the owner. This has been the practice all through. This would also have been the proper method even in those cases where the land was required for public purpose and not for a private purpose. After all if the government or someone else needs land for a good purpose, even in that case the purchase can be mutually negotiated.

16.7 But there could be one problem in this case. If a particular piece of land is required but the owner did not agree to sell it, public purpose may be stalled. In personal matters people make an all out effort but when the purpose is public, even a small impediment could be a good enough reason for leaving the matter and no one need bother about it. Therefore, a special provision had to be made in this law for those cases where land was required for a public purpose. In fact, serving public purpose is a primary purpose of this law.

16.8 In the beginning, there was not much need for the use of Land Acquisition Act. The government required land only for a few purposes such as laying railway lines, construction of roads, schools and hospitals. There was not much pressure on land in that period. Therefore, even if land was taken away from some one, he could get an alternative piece of land elsewhere. Moreover, so much land was not taken for these small works which

would oblige the people to move away from their original places. These people continued as a part of the economic system undisturbed. When someone was obliged to part with his land for a public purpose, even the community felt that it had a responsibility. In that situation, some arrangements could be expected to be made for the affected people after mutual consultation. Therefore, the land issues were settled rather easily. The compensation money was merely a means for enabling the person to acquire an alternative place in the old economy. The whole system again acquired a new balance after the chain of transfers involved in the process of land acquisition and resettlement.

16.9 There was one more special feature of the issue of land ownership and its use. In the system established by the British, the person, who made a living by tilling the land, was not the owner of the land; the owners were big landlords and jagirdars. Therefore when these lands were required for some other purpose, it did not matter to the new land owners. Just as the land of a Zamindar could be sold for a variety of reasons such as non-payment of revenues, its acquisition was just one more variant of the sale of land. The person who tilled the land belonging to the zamindar firstly had no right over it. And even if he had some right, it was deemed to cease automatically as soon as the right of the Zamindar himself was extinguished with the completion of the process of sale. The tiller of the land considered this transaction as yet another tragedy in a series of tragedies plaguing his life and simply moved out to some other place in search of living. This was not something unthinkable for them. There was no dearth of atrocities of Zamindars at that time. Therefore even where lands were acquired even on a large scale during that period, one did not hear the cry of displacement. Just as tribal was driven away from the forest with the use of law, similarly the person depending on land for his living was also driven away with the use of law. In fact, that was a time, when even the act of driving away was not necessary. The people knew it very well that once the government had decided they had no other alternative but to move away from there. The law was against them. In this way, the sale and purchase of land during the British period were essentially transactions between land owners. Therefore the process continued without creating any special problems. The compulsion to leave the land by its tiller was yet one more small hardship in life along with numerous others, with which he had compromised taking them as predestined.

#### A New Phase after Independence

16.10 There was a new turn after independence in the process of displace-

ment of people. Firstly, there were basic changes in the matter of entitlement of people to the land. The principle of land to the tiller was generally accepted because of which there was awakening amongst the people about their rights. On the other hand, a new phase of planned economic development started in our country. A variety of projects, small and big, were taken up under the new programme. Land was all required for most of these projects. Since all these programmes were executed for the development of the nation, there could be no objection to these projects being deemed to be 'public purpose'. Therefore a new series of land acquisition for public purpose was started in a big way for which the old law of land acquisition was used. The pace of this process has been continually increasing a trend which will not only persist in future but will become much more intense.

#### Development Projects and Displacement - Three Type-Situations

16.11 The developmental projects can broadly be divided into three categories with reference to the issue of displacement. Firstly, there are some projects like big dams for irrigation and hydle power, in which land is taken only once according to the need of the concerned project. Therefore, in these projects displacement takes place only once after the land is acquired. After these projects are completed, ordinarily there is no other activity around in the area because of which more people may be obliged to move out. Thus, the displacement due to these projects is direct and a one time affair. Secondly, there are some projects like industrial enterprises which require only some land for themselves and consequent displacement is also limited only to a small number of people. But the process of displacement continues even after the industry has been set up. A variety of other activities gradually pick up around that industry and there is continuous immigration of people on that count. These people get hold of the land in the neighbourhood, somehow or the other, and occupy the same on a permanent basis. The original inhabitants of the area are forced to move out under their pressure. In this way, in these cases the direct displacement may be small in size but the displacement which follows is much larger. Thirdly, there are some projects like the highways, in whose case direct displacement is negligible. The real displacement starts only after the project has been completed. The outsiders gradually begin to occupy the land on the road side and in its neighbourhood. These small clusters become the nuclei of future habitations small and big. The local people, particularly in the tribal areas are not able to stand against the pressure of these outsiders and they are forced to flee from there in due course.

16.12 It is necessary to understand the nature of displacement from different types of projects described above, because whenever there is a talk about displacement, it is generally limited to the direct displacement caused by development projects. No attention whatsoever is being paid to the subsequent displacement directly linked with the establishment of those projects. This subsequent displacement is nobody's responsibility. Therefore, some measures may sometimes be taken for attending to the problems of people displaced directly by the projects. But the subsequent displacement so far as the people are concerned is like natural calamity. These people have to contend with the most severe backlash of development without any help from any side. They get completely broken, they are literally destroyed, but no one cares even to look at them.

#### Whither Public Purpose

16.13 The first thing that has happened in the new phase of development after independence was that anything and everything was given the title of development according to the whims and fancies of the people who mattered. Once something got the respectable cover of development, it was taken to be necessary for the advancement of the country. That activity was also automatically deemed to be a public purpose. 'What is public purpose?' is an issue on which there has been no serious debate so far, nor has any attempt been made to define it under the law. The result is that whatever a government official or the government of the day considers appropriate, can be given the honourable status of public purpose. Once an activity is accepted to be in public interest, land can be acquired for that purpose under the law. Therefore, it has been possible to use land acquisition law for almost all sorts of programmes. Therefore, the land is being acquired from the people under the law in the name of 'Public purpose' comprising a large spectrum of activities from Construction of big dams through mining and industrial projects, to new settlements and even tourists resorts for the affluent tourists.

#### Compensation - the Only Entitlement

16.14 Since land has been accepted as property the only question which is being raised when it is sought to be acquired is about the compensation. The compensation depends on the price of the land. Therefore, the question boils down to the method adopted for assessing the price.

16.15 That is why a variety of rules and regulations have been put forward from time to time for assessment of compensation. The law courts have also been pronouncing their verdicts on this issue. Recently some new

provisions concerning compensation have been incorporated even in the Land Acquisition Act. For example, the people whose lands are acquired under the law almost compulsorily are supposed to be subjected to some inconveniences. Therefore they are now entitled to additional compensation by way of solatium. Similarly, if there is delay in the payment of compensation, there is a provision for payment of interest. But all said and done when land is taken away from a person, he has had no other right under the law except that of compensation, nor does he have any other right even now.

#### What is Compensation?

16.16 A number of ideas have been put forward about the quantum of compensation for land acquired. In the beginning a very easy solution was found by adopting the land revenue as the basis for determination of compensation. This was also accepted as the basis for computing compensation when Zamindaris were abolished. Even though the anomaly in the use of the principles adopted for assessing compensation of Zamindars in the case of land acquisition from the farmers was clear, yet for a long time no attention was given to it. But with the passage of time, the market price of the concerned land came to be accepted as the basis of computing compensation. But a variety of anomalies started coming up in taking market price as the basis. With a view to meet the situation a method of capitalising income from land was adopted for this purpose. Generally fifteen times the net income of the land is taken to be a reasonable compensation.

16.17 A basic defect common to all these methods adopted for assessing compensation is related with the acceptance of land as property. The land for an ordinary person is a source of his living. For example, when the net income from land is assessed, after deducting from the gross income the cost of inputs and the value of labour put in by the individual, that figure, in a way, represents the royalty relatable to ownership of land. In other words the net income is that income which the owner of lands can expect to get without making any contribution of labour from his side. This is relatable to the property form of land. The interest of landlords is also limited to this element only. But it is of no significance to a cultivator or a farmer. The land is a source of living for him; the basis of this living besides land is his own labour. He lives by the sweat of his brow. The compensation paid on the basis of net income or market price ignores this basic question and here lies the root of injustice.

16.18 An argument can be given in support of this approach. After all

even if land is taken away from a person he can still use his labour elsewhere. There is no bar against his getting engaged in something else. But such an argument could be accepted in a situation where unlimited opportunities exist for making a living through wage-labour. Moreover, the type of work which a person is expected to do is also a vital question. The type of opportunity of work not only concerns the skill of a person but on that depends his whole personality, dignity and self-respect. Agriculture as an occupation is located at the top in the traditional value frame. The farmer, therefore, can have the sense of real fulfilment only in agriculture. And then he is not capable of doing other work. The prospect of working as a casual wage labourer causes a shooting pain in his heart-the proud peasant is crest-fallen. It is for this reason that the farmer in our country is still tied to even those lands from which he is not able to earn even due wage in the real sense. But he prefers an income of 2 dimes as a person with self-respect rather than earning a 'mohar' by serving others. Therein lies his dignity and that is his greatest asset.

16.19 But the net income from such fields, according to procedure adopted for determining compensation, could be negative. In other words, if the farmer were to put in the same labour elsewhere he can earn more than what he earns from agriculture. The agriculture is losing proposition for him. Therefore that land has no value; where is the question of compensation in this situation. Sometimes people who are unfamiliar with the feelings of the farmer even say, eventhough as a joke, "it is as well that land is gone, having been liberated from the shackle of land the farmer can work anywhere he likes! why should he be compensated for this act which has broken his shackle?" Therefore when in persuance of these incongruous principles and in a depraved psychological frame the entire land of a farmer which is life personified for him, so much so that he is prepared to die or kill even when a field-boundry is disturbed by someone, is snatched away under the shadow of the authority of the State, merely by throwing at him some rupee coins, numbering a hundred or two, he is hurt to the core, but cannot express his anguish in a state of utter helplessness; he may get deeply disturbed and prefer to end his life. But the powers that be do not see in this even a shadow of injustice anywhere around them, everything appears to be proper and equitable, when looked at with spectacles of formal justice on; the transaction may even be considered to be in his interest. One wonders as what is this law about and what is this system for. Let us see some telling examples of this deadly process under whose sway the ordinary man has become a living corpse.

### Displacement - a Pathetic Tale

16.20 The story of acquisition of land and displacement of the people living on it is a story of utter disregard of rights of the common people of injustice in the name of law of empty promises and false hopes. The State and its representatives and under their shadow all sorts of elements have used the law of acquisition in an arbitrary fashion. And that was not all. They have grossly and openly misused it.

16.21 The story of Sonbhadra district of Uttar Pradesh is a pathetic tale. The most productive land of this area, which even now evokes nostalgic memories and people are moved by mere reference to the bygone days, was taken away for construction of Rihind dam. The condition of the record of rights of land in this backward area was really bad whose consequences the people are suffering even today. Firstly, many lands were not entered in the name of the people who owned them or cultivated them. Therefore, there was no place for them in the law and many of them had to flee without getting anything. Even those people who had regular title to the land got only nominal compensation. It is understood that the rate of compensation was twenty times the land revenue or about Rs.80 to Rs.20 per acre. It may be recalled that the authority of the State on land and other resources had been firmly established by the British themselves. Therefore no question could be raised against that authority during the alien rule. But even after independence, the form of state remained unchanged and its rights over resources also continued as in the earlier period. Therefore, the people in this area had no other choice but to run with whatever they could get in the form of compensation.

16.22 One good thing in this area was that the forest was extensive. Moreover, the new government after independence, notwithstanding the formal provisions under the law, did listen to the difficulties of the people and also reassured them about their future. The government had also to concede that after all the people must have something to fall back upon and earn a living. Therefore, they were told officially that they could go to the forest and establish themselves wherever they find suitable lands. The quantum of compensation was so small that the question of purchasing of land elsewhere simply did not arise. Therefore, people settled wherever they could find good land and, if necessary, they also cleared the forest. Even though their heart continued to cry, they somehow were able to make a living.

16.23 But the question of their rights over the land which they occupied in this process was not clear. In some places they got pattas, but in some others they got no paper. Even where they were formally given pattas by the administration now many questions are being raised about their validity on the ground that the land was under the forest. In sum even after 40 years after these people left their original homes, they have no place which they can call their own.

16.24 Whenever anyone visits this area, the people do not forget to remind about the old promises. When Pt. Jawaharlal Nehru went there to lay the foundation stone of Rehind Reservoir, he had declared in an open meeting that whosoever will have to move out because of Rehind will be resettled, when Rehind will produce electricity it will reach their homes first; their houses will no longer remain in darkness, every house will have electricity and alongwith that their homes will have the new light of the modern world as well! The people of the area will be partners in the development of the country in a real sense. Rehind has been constructed, electricity is being produced and is reaching out to distant corners of the country. But the people who were dislodged still live in darkness. Electricity has not reached their habitations. In fact, whether they can continue to live in the places where they have settled is itself not certain the question of electricity reaching their homes and huts will remain a far cry.

#### Some Concessions but No Rights

16.25 It is not necessary to give many more examples of displacement. Everywhere the story is the same. The people have no right to get anything except compensation. Yes, some promises have been made in some cases and some benefits have also been given to the displaced people. The Government in some cases has taken the responsibility of setting up a new habitation after the old village is deserted. Some industrial establishments have also given employment to one person in each displaced family or given them priority in employment. But the right of the displaced has remain circumscribed only to cash compensation. Whatever was given, besides the compensation it was by way of concession. Therefore, what the displaced may get in each case depends on the grace of the ruler. That is why the Central Government has recently withdrawn its circular on employment according to which all industrial establishments were advised to provide a job to one member of each displaced family.

16.26 One important thing is notable here. In the beginning, the number of projects was very small. In many areas government lands and forests were plentiful. Even otherwise the pressure of population was not that high, particularly in those areas where projects were being established. And the most important thing was that in the first wave of development after independence, there was same feeling for justice as well. Therefore even though the law provided only for compensation, in many projects rehabilitation was attempted. It is another matter as to how far did these attempts succeed. In Rajasthan extensive forest areas were cleared and agricultural lands were prepared for settlement of the people displaced by Kadana dam. Similarly resettlement in Tungbhadra project of Karnataka was also attempted on a massive scale.

#### Displacement in the New Phase

16.27 The above situation has gradually changed and is continuing to change. On one side, the number of developmental projects has been increasing. On the other side the availability of government land and forests has become more and more difficult. Moreover the normal pressure of population has also grown significantly. A complete ban, therefore, has been imposed during the eighties on the clearance of forests for any purpose whatsoever. The milieu within the government concerning developmental projects has itself changed. Firstly, these projects are no longer a novelty. Therefore not much personal interest is evinced at various levels about these projects. The routine of the system responsible for establishment of the projects has become central according to which things are allowed to take their own course. Secondly, in the beginning some promises were made regarding rehabilitation at the time of establishment of the projects. Some attempts were also made in this regard and there are some success stories as well. But on the whole the affected people could not get much benefit out of these promises and programmes. In fact, they lost everything they had, they were literally ruined and even their tales of woes are now worn out. Those in authority do express their grief when they look at their plight. But that sensitivity itself is getting gradually eroded, the initial reaction to that essentially human issue is almost over. And when a problem becomes insoluble, it becomes necessary to take the cover of principles. At that stage one tries to avoid the issue by resort to such platitudes as "development is born out of the womb of destruction", "someone or other will have to bear the cost of development". Today the Wheel of Development is moving on in the name of these principles crushing the people who fall within its path.

16.28 The situation in this new phase of displacement is entirely different compared to the earlier. Now it is not only a question of just few people being displaced, instead entire villages, entire communities are being forced to leave their ancestral homes, they are obliged to roam about aimlessly in an unknown and strange world. It is regretted that this new aspect of development has not been considered with the seriousness which it deserves. Consequently, entire villages and entire communities are facing disorganisation, the people are being deprived of the very basis to their life and they have nowhere to go. The biggest impact of this has been on the tribal areas, which we will be discussing in detail later. But the problem even in a non-tribal areas is horrible. Therefore it will be necessary to discuss it in some further detail here.

16.29 In the new phase firstly there is a surfeit of big projects. Secondly, an increasing number of projects are now so big that it is not one or two villages but hundreds of villages which are affected and lakhs of people who are obliged to move. There are no further lands and forests, where adequate space may be available for resettling whole villages. One more thing is notable here. When a whole village gets displaced, the people leave behind not only their lands but the intimate relationship with the entire habitat, and all natural resources of the area also gets broken. The interdependent economic relationship comes to an end. And after moving away from their "motherland", every displaced becomes a lonely individual who gets lost in the crowd.

16.30 In the midst of this catastrophe caused by displacement today only those people can get compensation according to the law who had a right over the land. The situation on account of the heritage of the British rule and also the present reality is that most of the land in villages is in the hands of a few persons. The majority of the people firstly do not own any land and, if at all, it is very limited. These people either work on the land of big people or make their living somehow from the natural resources around or take to whatever work is available in the community. In this way these people, were first deprived of their lands through the oppression of the inequitable social system. The same very people later lost their rights over community resources during the British rule. Bulk of these people who do not have any rights over land belong to the Scheduled Castes and, in some cases, to the Scheduled Tribes. But even then, they were somehow making a living within that inequitable system. It is an irony that in a country which resolved to establish a socialistic society by abolishing the earlier inequitable system, even after forty years of that

resolution, when a village is abandoned and the community gets scattered, what happens to the majority of the people in that process, is no one's concern - the law is silent, the system is mute and no one else need bother about them. This situation is not only unjust, it amounts to violation of the Constitutional safeguards provided for the Scheduled Castes and the Scheduled Tribes. Therefore it is necessary that the question of displacement should be considered in the context of our Constitutional schema and social justice.

16.31 Broadly there are three aspects of displacement viz., legal, social equity and operation. It will be appropriate to begin with the legal aspect first.

#### The Legal Frame concerning Displacement

16.32 The first point which appears to be odd while considering the legal issue is that there is a surfeit of laws in our country which are beyond the understanding of the common man. In many cases he is completely confused. But where displacement is taking place, where the right to life of the people is being trampled, there is no legal frame which may be broad enough to cover all issues concerning the affected people so that they could be systematically considered and satisfactory solutions could be found for each.

16.33 There are two basic reasons for the problems which the displaced people are facing and for their inability to get justice. The first root cause is that premise of the common law according to which all resources including land are deemed to be the property of the State. When land is acquired under the present law, only its property form is considered and the vital questions concerning the very survival of the displaced persons are settled on that basis. The same thing holds about other natural resources. There is no question of any right over these resources accruing in favour of anyone beyond whatever may have been accepted by the State, notwithstanding the fact that he may have been depending on the same for his survival not from today but through the ages. In this way all those people have remained outside the ambit of consideration in this legal frame who have not established any 'property-like' rights over the natural resources.

16.34 The second root cause of the problems of the displaced persons is the Land Acquisition Act itself. In a way, this law provides an equitable frame for ensuring that the relationships between the State and the citizens in matters of land are in order. But there are some basic defects

in this law in the context the present day conditions because of which the people, instead of getting justice, are becoming victims of injustice.

16.35 There are two basic concepts in the Land Acquisition Act on the basis of which all issues are settled. The first concept is about 'public purpose'. According to this law, the State can acquire land from anyone for a public purpose. The second premise is about the property form of land. If land is acquired under this law, the concerned person has a right only for getting compensation for it. It will be necessary to consider both these issues in some depth.

#### Public Purpose - some more aspects

16.36 As we have seen earlier, according to the present law public purpose is what may be declared to be as such by the government or its officers. Whenever the question of public purpose is raised in seriousness, the basic issues are somehow glossed over a lighter vein by quipping. 'After all whether the government should have the right to acquire land for a project or not?' In support of the rights of the State to acquire land, the example of national security is usually put forward. And then with the implicit arrogance of a winner, a very simple and innocuous question is posed that 'whether only because some people are not prepared to part with their lands, a project vital for national security can be abandoned?'

16.37 The answer of this question, in the eyes of the rules, is quite clear. The projects of national security will have to be executed and nothing can be allowed to come in the way of national security. But these people, under the cover of such non-controvertial questions, seek to provide an answer to a very basic question that 'whether the government has the final authority to decide about 'public purpose' and whether the provisions in the law about public purpose today are justifiable. The final decision in the matter of public purpose can be left to discretion of the state and its officers.

16.38 It is here that a valid argument is converted into a bad logic which has to be clearly understood. Because in some cases it may be necessary to acquire land for projects related to national security, it does not mean that a law should exist under which the government is authorised to take land for all sorts of works using the same procedure. For example, a tourist resort cannot be at par with national security and it is wrong to call it a public purpose project. But the land for tourist resorts is acquired under the same law even from the tribal people against their will and even with the use of force. In this way, the undiluted injustice

against a simple people is sought to be covered under the mask of public purpose. It is, thus, clear that notwithstanding the arguments for national security, the present law in which the government can call whatever it likes as 'public purpose' is not proper. If the Government so desires a separate law can be made for acquisition of land for projects concerning national security. But arbitrary powers to do anything in the name of public purpose is not desirable. It takes away the right of the people, which is not in the interest of justice.

#### Property Form of land - Violation of Constitution

16.39 The second question is about treating the land as a form of property. Land has been considered as property under the Land Acquisition Act. But is it correct? The legal and Constitutional position in this regard is not clear. That is why there are numerous problems. In a feudalistic system, where the Zamindar or ruler was the owner of land, land could be considered as property. The cases about acquisition of land before independence could be disposed of using this basic premise. There is an anomaly on this point even in the provisions of the Constitution. A distinction has been made between land for personal cultivation and other properties in Article 31(A), which authorises the State to acquire estates from individuals. The State has no right to acquire land in case and land owned by an individual within the ceiling limits. The need for this exception was realised because it would not be proper to take away the land from a person who depended on it for his living under a law, which basically treats land as property. But the spirit of this basic difference was not fully established in this article perhaps unintentionally. Therefore an arrangement was accepted according to which, if it became necessary to acquire the land from person which was within the ceiling limits under any law of the state it could be done by paying compensation at market rate. Therefore in the end the right of a person over the land under personal cultivation got circumscribed to only receiving full price at the market rate. In this way, the land under personal cultivation has also been treated in the Constitution in a way like property and it was thought that if a person gets full market price, no injustice would have been done to him.

16.40 In order to understand as to how this provision got incorporated in the Constitution, it will be necessary to see objective of the amendment law and the prevailing conditions at that time. A big debate was raging in the country about acquisition of property from big landlords. The debate was on the issue as to what should be the appropriate compensation of the land owned by big landlords if it was decided to acquire the

same? Will it be proper to pay them market price of their big estates? It was felt that such an arrangement was an unnecessary obstacle in the way of reforms. Therefore the focus in this constitutional amendment was entirely on the issue of compensation. After this amendment was adopted, the big people were denied the right to demand exorbitant compensation for their large estate in the name of market price. The government got the authority to deal with each case according to what could be considered as appropriate. But even in this an exception was made to the effect that compensation of land under personal cultivation will have to be at market rate. In this background, the law makers were convinced that if a person whose land is acquired gets market price for it, justice would have been done.

16.41 But this was not so. While the provision for payment of compensation at market rate for land under personal cultivation was made, but alongwith that it was also accepted albeit unintentionally that the law, which authorises acquisition of even under personal lands cultivation on payment of compensation, was in order. At that time, it was forgotten that land is not property for one who cultivates it personally, it is a source of his living, the very basis of his life. In the Directive Principles of the State Policy in the Constitution, adequate means for earning a living has been accepted as a basic right. In this context, the basic question is whether it is possible to assess the market value of something which is the basis of life of a person? The reply is a clear "No". Therefore such lands, on which a person may be dependent for his living, cannot be taken away from him on payment of market price. In this way, the provisions under Article 31(A) of the Constitution which authorises acquisition of land after payment of compensation at market price, is against the basic spirit of the Constitution.

16.42 Thus so far as the Constitution and the law are concerned, the present situation can be summed up as that every citizen has a basic right to life. For sustenance of life adequate means of livelihood is also necessary. Therefore adequate means of livelihood has been accepted a right of every citizen under the Constitution. Thus, it is clear that nobody can taken away the basis of life or the means of livelihood of a person in whatever way he may be earning his living. If this is done it is violation of the Constitution.

16.43 In our country natural resources including land are basis of life of most of the people. It is true that under the present law, personal rights can be established on these resources. Therefore the property form

of these resources has come into prominence. That is why the position of natural resources including land has become rather confusing both under the law and in practice. Land has been accepted exclusively as a property and the laws have been framed on that premise. It is notable here that in our Constitution property was accepted as a basic right, but was later on removed from that list. Moreover, the State has been given the authority under the Constitution itself that, if necessary, property can be taken away. In the new provision, the mistake was agricultural land was also given the status of property. A restriction, however has been imposed in relation to land under personal cultivation in so far as it cannot be taken away without paying compensation of market price. But in spite of this fact, this provision is violative of Constitutional right of the people, the right to life. The basis of life of a citizen cannot be taken away by mere payment of compensation as a property. Therefore what arrangement should be there, when the basis of life itself is involved is a question which must be considered separately.

#### Dialogue with the People

16.44 In this way when the legal frame for acquisition of land itself is defective, it will be necessary for us to discuss this matter at a higher level keeping in view such aspects like human rights and social equity and also operational issues. When the State itself acts in such a way that the basis of life of a person is affected, the question arises as to 'what is the duty of the State'? The first simple thing in this regard is that there must be a dialogue with the person whose basis of life is being taken away. And then ours is a democratic country, in which every citizen has an equal right in all respects. To deprive a person of his right to life and that too through a one-sided process, is a part of the Colonial tradition. If the issues concern the defence of the country, the development of the nation or a public purpose, then every one should be a partner in the related decision-making process, and above all the person whose very basis of life is sought to be taken away acquires a much greater right, that he will at least be told about the same. A dialogue can be established and should be established with this person.

16.45 In the same way, when all the people are partners in the national development the affected person whose is being deprived of everything he has, must be specially involved as a partner in that process. If he is told everything and is also given an alternative, there is no reason why he will not accept it. If a person does not accept the alternative offered to him, then either the alternative is not satisfactory or there

is something wrong in that dialogue itself. In any case, there should be no question of use of coercion. If it is not possible to convince a person, the matter should end there. And then it becomes the duty of the state that it should examine the entire proposal once more and try to convince the concerned person once more.

#### Incongruity of Dialogue under the Law

16.46 If the desirable process described above with regard to acquisition of land, whose need an ordinary person can easily appreciate, is compared with the present legal process, a very incongruous situation will be found. In the first instance there is a lot of misunderstanding in relation to dialogue with the people in our system on account of the fact that ours is a democratic system. There is some misunderstanding in this regard which should be removed. The Government in democracy obviously represents the people. In this context, can it be said that when the government or the representatives of the people, take a decision on these matters, it is not a decision of the people themselves. If that is the decision of the people, where is the need of a dialogue with any one ?

16.47 This argument is not correct. Firstly, no one knows as to what extent such decisions are really taken by the representatives of the people and to what extent they are imposed by the formal system. But even if it is conceded that the people's representatives have taken a decision consciously after full consideration of all facts, even then will it dispense with the need of a dialogue with the affected people? The ordinary representative of the people cannot speak on behalf of a person whose life is faced with the question of his life, unless he is not asked especially to present his side after fully understanding his case and also his feeling.

16.48 There is another very important aspect. In any specific case, the number of affected people is small while others are larger in number. There is one common characteristic of the representative system that it always leans towards the majority. That is why special provisions have been made for the protection of the interests of minority groups in the Constitution. We have been seen in relation to the rights of the tribal people that to what extent the representative system has not only overlooked the Constitutional provisions, but has even violated them. Similarly the question of the interest of displaced persons is involved, it is clear that the displaced will be in a minority. But there is no provision anywhere in the law so far about protecting the minority interests of the displaced people. The case of tribal areas is somewhat different about

which we will discuss later. Therefore, the general issue of the rights of the displaced people at the moment can be considered only in the form of protection of individual rights. Therefore, in this case, the most important thing which have to be seen is that whether in the process of displacement, the basic rights of the individual are not being violated. Since displacement concerns the question of the basic rights of an individual, the direct dialogue with him becomes necessary.

16.49 This dialogue in the present system, if all that can be termed as a dialogue, takes place only under the provisions of the Land Acquisition Act. When the question of acquiring land under this law is considered, the concerned person is giving a notice under the law, objections are invited and heard in and the end, a final decision is given by the presiding officer. In this complex legal process, firstly, a poor person is not able to understand anything. All these processes to him are like a big big web out of which, somehow he wants to get out as quickly as possible. So far as the members of the scheduled Castes and Scheduled Tribes are concerned the entire process is big punishment.

16.50 There is one more thing. If a dialogue with the affected people is considered necessary, it must be made clear as to what would be the issues for that discussion. There are a number of policy issues. For example whether the purpose for which the land is proposed to be taken is an important one, if the proposed work is essential, then is that the only way to accomplish the same or there can be any other alternative. There can be many more important and formal question. For example, if land is taken away from a person, then will he be entitled to a share in the benefits of the development? Can some alternative arrangements be made for his living? etc., are some of the questions of life and death for him. Some formal questions also arise in land acquisition. For example, questions like how much land is acquired, what will be the rate of compensation, when will be the compensation to be paid and such like, also need to be satisfactorily answered.

16.51 For a meaningful dialogue on issues of principle, it is necessary that the people should have full information. Similarly a dialogue about participation in development can be possible only within the frame of a comprehensive plan prepared for that purpose in advance. The position in these matters is so bad that nothing can be said about them. If we take the question of information about the projects, then we find that even now a debate is raging whether the people have a right to informa-

tion or not. How ridiculous is the situation, and that too in a democratic society like ours, that on one side there are piles and piles of principles yet on the other side, the people who are being uprooted in the name of the development, cannot even get necessary information and endless discussions are continuing about the principles in that regard. Similarly, there is no basis whatsoever for a dialogue about the sharing of benefit of development. There is no serious discussion so far even on the question whether the principles of partnership in development should be accepted, let alone the question of preparing a comprehensive plans for achieving that objective.

10.52 Now the question is that after all why even such simple things are not being done. There is only one reason and, that is, the basic premise of the present law. We have seen that in the matter of land, government is the owner. Therefore the government and its advisers are competent to take all decisions in that regard. That is not all. They are also the final arbiters in deciding about what is a public purpose. Therefore what remains for dialogue are questions like market rate and payment of compensation. This is the only right of the common man. He must remain content with that. The principles concern the realm of ideas and the dream world - what can be said about them? The money can be seen and felt by every one - the political leader, the administrator and the court of law. The discussion revolves around that concrete crass, the basic issues are left on the way-side-un-understood, unappreciated and unseen. In this way, the situation today is that the basis of life is being snatched away from the people on the basis of one-sided action without any dialogue with the affected people. This is patently unjust and clear violation of the Constitution.

#### Public Purpose - A Question not of mere Numbers but Human Values

16.53 In this way it is necessary to examine once more the foundation of law. The concept of "public purpose" is the most important one in this regard which is at the root of all other issues. We will be discussing earlier, the question of minority and majority in the context of the spirit of democracy. To overlook the interests of a smaller number of people notwithstanding that they may be in minority cannot be accepted as proper. Therefore, it is necessary to provide special protection to the minority interest.

16.54 The same basic question arises in relation to the process of development as well. When we consider a developmental project, it is clear that the number of likely affected people whose lands are sought to be acquired,

will be small. It is these people who can be seen because they are before our eyes. But it is always claimed that the benefits of the project will accrue to many. In this way, the issue of benefits accruing to the 'nameless many' comes to the fore. In this account, the loss of some and benefit of many comes out clearly. And then it is taken to be necessary for the change in the process of the development and therefore claimed as justified.

#### Account of Profit and Loss - How much Justified?

16.55 There are two aspects of this question which must be clearly understood. Firstly, the argument "loss of some and benefit of many" on the face of it appears to be justified. But it cannot be accepted as a general principle. The account of profit and loss on the basis of numbers can be accepted only in a situation where the people on both the sides are exactly placed similar situations and the profit and loss for both sides also concerns exactly similar elements. If loss means reduction of comforts of some people and profit means additions in the comfort of some other people, then comparative accounting on the basis of numbers can be done and it will be justified. In the same way, if in a particular programme loss is being sustained by a few persons and benefits accrue to many more it can be a justified programme. But in a situation where even though the loser may be a few, but the loss itself, the situation changes. If a community howsoever small may be its size, faces disorganisation, poverty and in the end is likely to reach the precipice of destruction, can this 'loss' of that community be treated as negotiable under any circumstances?

16.56 To create comforts for many by risking the life of a few is not a matter of ordinary exchange. This is the question of human values. There are numerous examples in the history where powerful many have not only taken away the basis of life of the weaker few but even exterminated them. And even such action have been considered as justified with allusion to high principle. But such a behaviour is neither in keeping with the tradition of our country, nor is it consonant with our constitutional values. 'Public purpose' cannot be determined on the basis of numbers or creation of facilities and comforts. Some entirely different measures are necessary for this purpose. Only human values can provide that basis.

#### Delusion of Less and More

16.57 In this accounting of numbers, with reference to development projects it will be necessary to look at yet another aspect that who are these "nameless many"? It is difficult to identify the entire benefitted population except for those who may be directly benefited from it, but if we

Carefully study the process and results of our national development, it becomes clear that the benefit of development accrue to a few people only. Nevertheless, in the case of each project it is always asserted in reply to the question of gain and loss, that a few people lose while nameless many stand to gain. Accordingly the projects is accepted as justified. But if all the projects executed in the name of development are taken together and a full talley is made the situation is just opposite. The centre of our developmental process is the elite group. Therefore, the benefit of every project accrues to some member of this select group only. Thus if any development programme, is taken, the 'nameless many' everywhere turn out to be members of the elite. But the 'far' affected people in every project comprise the majority of the population in the local area who are different in different places. Therefore in the total accounting this small group of 'nameless many' stand to benefit while the 'few' comprising the bulk of the people are the losers. Thus the balance is reversed. The benefit of development accrues to the elite sections while the ordinary people have to bear the cost. The summation the benefit of many and the loss of a few gets transformed into the benefit of a few and the loss of many.

#### Expectation from Courts

16.58 The second question with regard to public purpose is process of its determination. Can something be expected from the Courts in relation to the determination of should be deemed to comprise 'public purpose'. Eventhough the question of 'public purpose' arises while dealing with the Land Acquisition Act can be expected by way of adjudication on the issue whether what is being done in the name of public purpose can really be said to comprise public purpose, not much from the courts in the course of their proceedings concerning acquisition. The Courts generally can look into a few issues concerning the law such as whether the officer has acted in accordance with the provisions of the law, whether he adopted the right process, whether the officer has done something which mala fide any discrimination in the process. if the process does not suffer on any of these counts the court will not interfere in the action taken by the administration. The powers have been given to certain officers under the Land Acquisition Act to decide as what should be taken to qualify as public purpose. So long as the officers use this power without discrimination and according to their , no one can challenge their decision. Therefore, the public purpose has to be raised above the letter of the law and has to be defined in the broader frame of public policy.

### Some basic principles about displacement

16.59 Equity, justice and fraternity comprise the foundation of our national life. Every citizen has a right to live with dignity and self-respect. It is the duty of the State that it not only protects this right but also creates opportunities to enable all citizens to lead a good life. Both these themes run parallel in our Constitution. In fact, they are complementary of each other. Therefore the State cannot ignore one responsibility simply because it has to discharge another responsibility. As has been stated earlier right to life is the first basic right and as a principle it stands at a higher pedestal compared to the ordinary law; it cannot be circumscribed even by the Constitution, it is self-created. This basic right has to be protected at all cost. Therefore, the path of development should be chosen in such a way that the basis of life of even a single person is not destroyed.

16.60 The final decision about the right concerning the means of livelihood can be only of that person whose right to life is being affected. Therefore, whenever the State considers taking up a programme which involved a change in the use of natural resources, its first duty is to establish a dialogue with that person/community whose life depends on those natural resources. It should be obligatory to provide necessary information about objectives of development as the background for this dialogue aimed at obtaining their consent. Moreover an essential precondition for any new use of natural resources should be that not only the concerned institution or the government should make an alternative arrangement for their living in future, which should be better compared to the earlier, but the government should also act honestly and fully convince itself that whatever is being stated by its representatives is correct. What is more important even than this is that the affected people themselves should realise that the new alternative will be better for them and that they should accept it without any reservation of their free will. If any action is taken ignoring these basic principles, it will be against the values of the democratic system of our country, it will be against the spirit of our Constitution.

### Inequity in the Present System

16.61 The way the State is presently taking away natural resources including land from the people and putting them to other uses is totally against this spirit. The land is being treated as a property and only compensation is being paid for the same. For example, where the land belongs to a landlord, it is the landlord who is deemed to have exclusive right over it and it is he who gets the compensation. What will happen to the

innumerable agricultural labourers working on that land, share croppers or tenants informally cultivating those lands nobody knows. There is no provision for them under the law, nor is anybody responsible for them. Similarly, if someone acquires a legal right over the resources on which some other 'resourceless' people were dependant for their living, nobody seems to be concerned.

16.62 The British, in keeping with the colonial tradition, had declared that all the resources of the country belong to the State without caring even to see as to who was eking out a living from them. This was clearly the first wrong step, but that wrong continues even today and is proving to be the biggest curse for the poor. What will happen to those people who may not be directly dependant on land but are an integral part of the local economic system, when the land is acquired from the land owners is also not referred to anywhere. Therefore the provision to acquire resources including land in public interest after payment of compensation only to their owners is against the spirit of the Constitution and therefore unconstitutional.

#### Wrong Use of the Process of Land Acquisition

16.63 So far we have considered the anomalies in relation to the basic premises of Land Acquisition Act from which it is clear that they are not in consonance with the spirit of our Constitution. But even if, for a while the law is taken to be in order, its implamentation also leaves much to be desired. It is beset with a number of irregularities. The Land Acquisition law was enacted at a time when only a few small government works were undertaken for which small pieces of land were required. Even otherwise, it was a period when rulers, Jagirdars and Zamindars had their sway. When the land was acquired from these people, others depending on land had no right to object in that regard. But in the new phase of development, the projects which are being executed are so big as could not have been even imagined at that time. People from not only ten to twenty villages but hundered of villages may be forced to move out for one single project. The developmental projects themselves are of wide variety. There may be large dams for irrigation, big mining projects and extensive sancturies for wild animals to move about freely.

16.64 There are two necessary condition for acquiring land under the Land Acquisition Law. Firstly, the land can be taken only for a public purpose. Secondly, the concerned person has a right to present his objections before the land is taken. We have already discussed that in detail about public purpose. We will, therefore, consider the second question

as to whether the objections of the people are being really heard and can they be really heard as provided for under the law.

#### Routine Handling of Objections

16.65 The process of establishing a project really begins with the emergence of the concept or the idea about the possible project. Thereafter a detailed report is prepared which covers a variety of technical aspects and also indicates a suitable location or more than one alternative locations for its establishment. The final administrative approval for the project is accorded only after the technical and the financial approvals. The action for land acquisition usually starts after a project has been finally approved.

16.66 Before a final approval is received by the project, the local people come to know indirectly about the fact that their land might be acquired for the project. To get any authoritative information in this regard is not possible for the simple reason that so long as the final decision is not taken no one can give authoritative information about acquisition of land. Therefore in all projects what usually happens is that the people go on listening for not only one or two years but for ten or twenty years that perhaps their land may be taken over. Even the project is started, the action for acquisition of land is taken in a sequence in accordance with the actual need of land for the project at a particular time. For example, land is purchased first only for setting up infra-structural facilities for a project. Thereafter land is gradually taken for the construction of a project. Thereafter land is gradually taken for the construction of a project. In big dams, submergence comes only in the last year.

16.67 The basic question in this process is that when a notice is given to a person about acquiring his land after a big project has been started and he has asked to present his objections, if any, what does it really mean? As soon as a project is finally approved, it is also almost certain that all the land, which may be needed for it, will be acquired. In other words, the entire land in the 'zone of influence' of the project, in a way, can be deemed to have been acquired in principle, what remains is its operationalisation. The only thing which remains to be told is the precise timing of take over of the land after the process gets going. Thus sanction of a project itself is like a 'line of fate' about acquisition of land which cannot be changed. Now in this situation what could be the meaning of asking the people to a question such as, whether they have any objection about their land being taken, after not only a project

has been finally approved but even the work on it has been started or after it may have even reached a stage of no return? So far the only purpose which this question has served to that if the person so likes, he can present his objection about the quantum of compensation. In other words, his objection cannot be on the basic issue of acquisition of land but only about the compensation he should get. The law is clear even with regard to the compensation. Therefore there is not much scope for a significant change in it. But the scope of Section 4 of the Land Acquisition Act, which deal with people's objections is comprehensive. A question mark can be put on all aspects concerning acquisition of land including the fact whether the project is for a 'public purpose'. For example, if land of a person is being taken for constructing a holiday resort for tourist, he has a moral right to ask that after all how could the construction of a tourist resort could be taken to be in public interest. Thus the legal process concerning land acquisition is followed only in a routine fashion, which is violation of that law in the real sense.

16.68 The matter does not end here. It is expected in any legal process that all the people will present their respective sides and full attention will be given in the final decision on each of them. A variety of vested interests are created as soon as a big project is sanctioned. For example, the people in the benefited zone become a vested interest as soon as the irrigation project is sanctioned. Similarly the construction of a project creates new possibilities for technical personnel and alongwith that the possibility of contracts related with that constructic It means that with the formal approval of a project there is a qualitative change in the situation. Every individual and group looks at it from its perspective. And if there is any change in the schema at that stage, everyone feels as if something has been snatched away as from his hands. When open use of money and even physical power starts in the clash of these interests, reasonable and equitable decision becomes a near impossibility. In fact, the voice of those people whose basis of life is being destroyed is nowhere to be heard. They are not able to get even the legal right to present their appeal.

16.69 In this way, all those cases, in which the government decision to establish a project precedes the process of land acquisition are against the basic spirit of the law of land acquisition. Moreover, that law itself is not in keeping with the basic spirit of our Constitution, it is its violation. It is an irony that even after 40 years of enforcement of the Constitution, noone so far has had time to consider these basic questions. This 19th century law is being used blindly in a hurry somehow

to reach the 21st century without even thinking whether the process is in accordance with the intention of the law. The questions about the Constitutionality of these actions and their compatibility with human rights are a far cry.

#### Basic Change for Social Justice

16.70 The present law for acquisition of land for the so-called public purpose and its implementation is highly inequitable on social considerations. This is well known that in race for establishing personal rights over land and resources, the members of weaker sections which include bulk of the members of the Scheduled Castes had trailed far behind. It is these resourceless people who are making a living from those resources which are now formally under the ownership of other people. When the government takes over these resources, only the owner is present before the government and it is his interests which are kept in view. And at that time, even the government ignores the right of earning a living or as the basis of life of those people who are dependent on them for their living. The Zamindar collects the compensation of land, the cultivator just looks on askance.

16.71 Similarly, when the government takes over the resources in the tribal areas, they are bewildered because their rights have not been recorded. It is these unwritten rights which I had described in my last report as the Constitutional right of the tribal people which are the very soul of the Constitution and permeate the Constitution but which has not been given a concrete form. What is the fault of the poor if the rights have not been given a concrete form? The fault in this regard rests either with the government or its officials. Thus how is it that the penalty of their default falls on the poor?

16.72 To end this injustice there is a need for basic change in the present legal system. There are three conditions for making it equitable. Firstly, the current use of all resources including land from which people may be earning their living should be recognised in the form of their right to life. Secondly, after a plan is prepared for an alternative use of resources in public interests, a formal decision should be taken about that purpose being a public purpose. This decision-making process should include all those who are depending on those resources and their consent should be made obligatory for authorising any alternative use.

Thirdly, before planning any alternative use of resources, a new bases for the living of those people who are dependant on them should be created. The new base must be acceptable to them, of their free will without any reservations. Only after these conditions are fulfilled, it may be possible to protect the basic right of the people, that is, their right to life, in the process of structural change in the economy based on alternative use of the resources. Only then, the whole process of change will be equitable and will also be in consonance with the basic spirit of our Constitution.

## DISPLACEMENT - 2

## DISPLACEMENT IN TRIBAL AREAS

We have discussed in detail about the unhappy situation of the people who were displaced as they were caught in the whirl of development. But when we see the process of development and displacement in the tribal areas, we find that the situation is still worse. There are numerous features of tribal displacement which have not been even alluded to. Consequently, the tribal people are facing a great crisis and in big trouble. It is, therefore, necessary that we especially discuss some of those issues.

Areas on the Margin of Economy

17.2 With a view to understand the issue of displacement in the tribal areas in its true colour, it will be necessary to understand the place of tribal areas in the national economy. I have discussed this question in some detail in my earlier Report. Our national economy was centred around agriculture whose structure remained almost unchanged for centuries before independence. The hills and forest were located on the margin of that system which comprise the tribal areas. These regions were extremely accessive. Therefore, the resources of these areas did not have much importance in the economic system of that time. Even though the inhabitants of these areas had some links with the people living outside, but even then their life was more or less secluded. In this way the resources of the tribal areas were on the margin so far as the economy was concerned and the people living in those regions were on the margin of the social system.

The Growing Importance of Resources and its Consequences

17.3 The need for resources found in the tribal areas gradually increased in the new phase of development after independence. The commodities which had no value till then gradually became more and more valuable. But these resources were not unencumbered. The tribal people were using these resources according to his own style and making a living thereby. They had no concern with the new uses of these resources. The teak wood from the forest which was very valuable for outsiders had only one use for him,

that is, fencing his field because it was easy to cut and splint. The iron was only a piece of ordinary stone though quite heavy and distinctive. The deep valleys of the rivers were sacred to him.

17.4 But many things which are mostly found in the tribal areas have acquired a new value in the economy of the day. The water flowing in the valleys and rivers can be dammed and used for irrigation and the high falls and rapids can be harnessed for producing electricity; the minerals are necessary for manufacturing industrial goods; the forests are the only source for meeting a variety of needs of the new civilization, and as a late realisation for the health of environment itself. In these changing times, the traditional use of these resources by the tribal people for making their living according to their style, is not regarded by the new system as the right use, if it does not do the same as outright misuse. Therefore, if the tribal continues the same use of these resources and is not prepared to allow their alternative use, he is seen as an obstacle in the great march of progress. In this way a very anomalous situation has arisen in the tribal areas simply because while the resources traditionally under command of the tribal people have become valuable, their life-style continued to be the same as before. The tribal has become an unwanted entity because of the possible obstruction by his very presence to the use of those resources. But the new current of so called development is very fast; it is also very powerful. The tribal has no position to stand against it. Therefore, he has to move aside, away from the current, whether he likes it or not to clear its way and allow it to move on unimpeded. It appears as if displacement has become the destiny of the tribal.

17.5 The tribal areas are quite different from other areas in one more respect. The scope of market in our national economy is now quite extensive which is also growing continually. But the tribal areas are still rather outside the market system. Therefore, the style of functioning of the tribal economy is quite different. In many places even today the tribal people are managing quite well without getting many things from outside. However, in the wake of development when these people all of a sudden come into contact with a new economy, they are unable to forge a harmonious relationship. On the one hand, the exotic system has become quite dominant. It strives to grab their resources and use them for new purposes. On the other hand, his traditional system is in disarray. Therefore, they are

gradually becoming resourceless and helpless.

17.6 The impact of this new change on all tribal areas is not the same; it is quite different in different regions/people. The small tribal communities, which were entirely dependent on forests, have not been able to face the challenge of the changing situation. Many of them have almost disappeared. Moreover, a few communities, which are still surviving in the forests, are being forced to move out. Their rights are not recorded. Therefore, they cannot hope, let alone claim, a sympathetic hearing. On the other hand, the resources from which they have been making a living are dwindling in the face of growing pressure from more stronger communities or the government itself. In this way many tribal communities got dispersed and they have ceased to exist as communities. Similarly, in many areas the economy of the shifting cultivators has collapsed. There appears to be no end of their wanderings. Only those shifting cultivators have survived, who did not come under pressure of the outside system. Thus, the tribal communities after coming in contact their new system are under severe pressure and are not able to protect themselves against the same.

#### Dissonant Condition in Tribal Areas

17.7 A dissonant situation, thus, has arisen in the tribal areas. The tribal areas on the one hand have great potential for economic development but the tribal communities on the other hand are not prepared for the new contact. No initiative of any type whatsoever has been taken to end this anomalous situation in any area. Moreover, no plan has been prepared to mould new programmes keeping in view the special situation in the tribal areas so that the tribal people can be protected against the ill-effects. Similarly, no legal or administrative system has been created for meeting the new challenge. In fact, the legal as also the administrative structures of advance areas are being used as they are in these areas as well. The ordinary tribal has no knowledge or understanding about the legal system. There is yet another aspect of this situation. These laws have been in force in other areas for a long time. Therefore, the local system has gradually adapted itself to its requirement and now almost all activities follow the precepts of the new system. But even though many laws were extended to the tribal areas long time back, but no effort has been made to establish a system according to the local needs. In this situation, when the exotic law was enforced with severity, the tribal found himself in a big soup.

17.8 The biggest question in the tribal areas is about the rights of the people over the resources. The legal rights today require to be substantiated by written record. The situation in the tribal areas in this regard is very bad. Firstly, in bulk of the tribal areas, there was no settlement, even in those cases where land records have been prepared, they were not based on a systematic survey. The administration depends on notional visual maps. Secondly, all these records are very old. No special attention has been paid to this question even after independence except in a few areas. Therefore, in most of the tribal areas, those very papers are non-existent on the basis of which further legal action can be taken. In this situation, the rights of the tribal people remain unheeded simply because they have no papers to substantiate them. Since all resources deemed to be the property of the State, therefore, if there is no paper record, it only means that the tribal has no right and everything belongs to the State.

17.9 In this situation when a new project is established in a tribal area, they acquire the command over resources by way of a simple transfer directly from the State, for the simple reason because it is believed that since the record does not contain any names, the tribal has no legitimate claim in the same, everything belongs to the State. The people are obliged to move out from his place without payment of even nominal compensation.

#### Accounting of Displaced

17.10 All my efforts to collect information from the State Governments and Public Sector Enterprises about the number of people who may have been displaced so far in the tribal areas since independence did not yield much result. Some States have given only some figures, that too for some areas which did not mean much. These figures mostly relate only to direct displacement, which in the case of industrial enterprises concerns only the land formally acquired in the beginning for their establishment. For a number of areas, no figures were available or they were incomplete. When the situation about the figures of direct displacement is so dismal, the question of getting any reasonable account of what happened after displacement acquired a torrential dimension simply does not arise.

17.11 The Constitution has placed special responsibility on the State about the development of tribal people and their protection. There is

a provision in the Constitution which calls for making the administration in a Scheduled area good and effective. But the situation in this regard is rather bad largely because the system has not been adopted to the socio-economic situation in the tribal areas. On the other hand, the pace of change in the tribal areas has been very fast because of the rich natural resource endowment which they possess. One enterprise after another is being established, one dam after another is being constructed basically in a bid for optimal utilisation of these resources. Investment of hundreds of crores of rupees is being made. But no attention, however, is being paid to the impact of these projects on the tribal people. The emphasis on all sides is on utilisation of resources, no one cares about the man. No one seems to have even time to pause and think as to how many people have been rendered homeless by these establishments; the question of ensuring a respectable position for them in the new economic system remains a far cry.

17.12 A flood of migrants has started pouring into these areas after the commissioning of big dams, large industrial projects and national highways; the flow has been continuously growing in size. It is said that about 10 to 15 out of 100 tribals in our country have already been displaced by now for one reason or the other. If this process continues and the paradigm of development remains unchanged, the pace of displacement will become still faster and the condition of the tribal people will further deteriorate. A straight question which must be answered about this process is that if upto the end of the Seventh Five Year Plan, the total investment of these areas has been                    thousand crores of rupees, about 15 per cent tribal people have got displaced. Now if the investment in the Eighth Five Year Plan and thereafter becomes twice or four times that amount, how many tribal people will have to face displacement? It appears that the time is approaching very fast when in many tribal areas no space would have been left for a single tribal to stand on.

### Disorder and Lawlessness

17.13 The programmes of so called development are being taken up in the tribal areas at such a fast pace that a state of near disorder has been created. For example, a large number of thermal power projects, irrigation dams and a variety of enterprises have been set up in the last three years in a small area on the border of Uttar Pradesh and Madhya Pradesh. This

area is developing as the 'Power Capital' of the country. But the original inhabitant of this area is in a real bad shape. In some cases, the same persons have displaced 3 or 4 times in succession because one enterprise after another was being established at the same very places where they were settling on their own and taken for settlement by the governments. They are not sure even now whether they have reached the final destination and no one will come and drive them away once again even from there. In this way, even while a person is not able to come over the shock of one project, some other project appears almost from nowhere without any prior notice or warning. And he is obliged to negotiate and struggle with an entirely new situation. Every project has its own law and its own method of functioning. No one knows about who is to get what and from whom? There is no serious thinking at any level about the grave problems which are arising in these tribal areas, let alone preparation of a systematic plan for their resolution. If somehow some money just reaches the hands of the affected people by way of compensation, the government treats the case as closed as if its responsibility is all over with that simple act.

#### Irresponsibility of the State

17.14 The simple tribal people are not able to stand in the face of this terrible facet of development. The State, which was given the responsibility for their protection, has paid no special attention to this issue. As I have said earlier, the State has three different roles (page 12). When the State assumes the role in relation to development, it gets so much involved in the same that its role of protection is just overlooked. The full power of the State in tribal areas is being used for pushing forward the wheel of development. But the same State unfortunately does not hesitate even in misusing its authority taking advantage of the innocence of those very people whose protection is their responsibility. For example, can the people in a non-tribal area be forced to move out by burning their huts under the shadow of force? But use of force is a matter of routine in the tribal areas and burning of huts is not an unusual event.

17.15 In this way, when the new system moved on into the tribal areas it becomes the power-blind. It does not even care to ponder over the propriety or otherwise of what can be done in a tribal area. It is here that the humanity itself begins to cry! But the administration is not

concerned with it, it proceeds ruthlessly in the name of development for promoting its cause. It is a matter of deep regret that even in the face of such a grave situation, which has arisen in the wake of development in the tribal areas, not even a rough policy paper has been prepared which could throw some light or provide guidelines about the respective role of the Centre, State and the concerned establishment in the event of people's displacement due to development projects and what could be the tribal expect from those in whose hands rests the grave responsibility of their protection. There cannot be a worse example of violation of Constitutional provision concerning safeguards of the tribal people.

#### Some Special Aspects of Tribal Displacement

17.16 The issue of displacement in the tribal areas has to be considered from many angles - the existing law, Constitutional provisions, justice and human rights both in relation to their operational aspects of the day and future possibilities. In our general discussion about the displacement, we have seen that the present law under which land is acquired is not quite correct on a number of counts. It is also not in keeping the spirit of the Constitution itself. This is the position in relation to the general areas. Now when the same very law is applicable to the tribal areas without any change whatsoever and no attention has been paid to the special situation there, it is but natural that situation there will be still worse.

#### Incongruous Law

17.17 In the present system there is only one basis for all activities of an individual and that basis is the rights of the people. There are specific laws which define the people's rights. In every law, there is a process prescribed for the determination of the rights. Now, so long as no action is taken for determining these rights they do not get recorded and presented in a written form. And so long as this is not done, it is presumed that nobody has any rights. As we have seen earlier that firstly action on lines has not been taken in the tribal area. And if at all some action has been taken, it is half-baked or has become very old. Therefore, whatever rights are recorded in government papers, they may not be in consonance with the field situation. The field situation may be one thing while the record may have altogether something else to tell. Therefore, the biggest trouble with regard to the existing law is that the foundation on which the law stands is itself missing in the tribal areas. As we will

see later, no one is particularly concerned about this dissonance. The approach of government officials is that if the routine formality of a law is somehow complied with, what happens to the people is not their concern. In case people are adversely affected, the reaction at the most may be in the form of an exclamation 'it is their luck, how the government can be responsible for it?' Alternatively, one may get a response such as 'after all it is a matter of law, what can be done?'

#### Law and Custom - Unending Chain of Anomalies

17.18 If for a while, we may accept the existing law as it is, to be in order; even then, in the tribal areas where land and other resources are being acquired by the government for other purposes, the intention of the law itself is not being fulfilled on account of a state of disarray in the record itself, when there is no record what can the law do? On the other side, there are basic defects in the law itself, in so far as the law is not in consonance with the traditional system of the tribal people. No initiative has been taken at any level from any side to remove this basic anomaly. In fact, this incongruous law has been accepted as a justifiable law. Therefore, there is even no realisation about the need for having a second look at it. That is why the situation in the tribal areas is still worse compared to other areas. The consequences of this incongruity will be clear by a few examples.

#### What Price the Land?

17.19 There are three important things about the incongruous law. The first basic premise of the Land Acquisition Act is that land is property; therefore, it can be assigned a price and can be put up for sale. But so far as the tribal people are concerned, land is not a commodity open for sale. The land is like mother to them; therefore, a price-tag for land is unconceivable. Thus, the law concerning acquisition of land is against the tradition of the tribal people.

#### Exchange without Understanding

17.20 The fact is that even though the incidence of transfer of land in the tribal areas is quite ubiquitous, there is no sale of land in the real sense of the term. A sale transaction can be said to be possible only in that situation where both the sides understand its real nature. What has happened is that the outsiders after reaching the tribal areas usually take advantage of the innocence of the simple tribal and trap him without

his knowledge in some promise or agreement after payment of a notional amount or get a deed executed and then coolly occupy his land. This contrived occupation of land of the helpless tribal in the eyes of the outsider was a sort sale of land. This is also how it is perceived under the law. But what actually transpired between the outsider and the tribal was not sale at least so far as the tribal was concerned. 'Sale of land' is not a part of his tradition, it is not an idiom of his society. Therefore, he does not know what it means when sale of land is effected. He only knows one thing - he loses the land, the land has been snatched away from his hand for some reason best known to the other party. And grabbing of land is not an unknown thing for the tribal people. The stronger persons and other communities have been occupying their lands not always with their consent. In their eyes, the same process is continuing. And in the new phase, it is not necessary that he may lose his land always in return for money. His land is being grabbed sometimes with the use of force or by some other fraudulent device. He is putting up with all these expropriations - he sometimes even revolts against the same. In that event, the people belonging to the new system swear by his agreement - the very same agreement which he has never entered with a clear understanding.

17.21 The acquisition of land after payment of money or compensation as provided in the law, which is also termed as sale under that law has not much meaning for the tribal people. When the government acquires the land of the tribal, so far the tribal is concerned, it is just another incident of land-grab like many others which he has been witnessing. He may no doubt get some money in exchange. But that money has no meaning for him. Everywhere the tribal exclaims in desperation - 'what is the use of money'? But nobody listens to him. This forcible take over of land of the tribal without his consent is known under the sale, it is also known as acquisition under the law. And the State has the authority under the law for this acquisition which in the eyes of the tribal and even in its operational form is nothing to land grab under coercion. Can we call such process in the context of present tribal situation as really in accordance with the law? Can we call it justice? To do so will be merely a pay with precepts of law and justice. But this is what is being trotted out as law and justice for the tribal people.

#### Consequences of Ignoring Communities

17.22 The other thing in the present law which is not in consonance with the tribal tradition is that ignoring the reality of the community and

the social context. The basic unit in the Land Acquisition Act is the individual and personal property belonging to the individual. Therefore, it is these entities which are incorporated in the law. There is no reference in this law even about the being of a community; it has no concern with this aspect. The law also has nothing to say about the way the community and its members are linked with the natural resources and environment of the local area. In the modern system, on the other hand, individual is the basic unit. Consequently, the right of the individual is taken as the base in all matters. Therefore, when the Land Acquisition Act is seen from their side there is no anomaly. But the community still is a real entity amongst the tribal people. The basic unit of their social life is not the individual but the small community. A person outside his community is like a fish out of water. He cannot even think of life outside the community. But the law treats every individual as a separate entity and their rights also dealt with separately. Every individual gets compensation according to the rights which he can establish, but no one is concerned about what happens to the community in this process. The community itself is not able to understand the intricacy of the new situation. No one who understands has any responsibility to help them during this critical phase. Therefore, a process of disorganisation gradually overtakes the community under the impact of displacement. Thus, every member of that community is left alone to feed for himself. In that situation, he has nothing else to fall back upon except to roam about aimlessly in the wide open world after having lost everything he ever had.

#### Ignoring Dependence of People on Resources

17.23 The life of the tribal people is closely linked with the natural resources, nay the whole environment comprising his habitat. The natural resources symbolise the tradition of their lineage and a sacred social trust which he uses with great care. Agriculture accounts for a very small part of their total life support. The real sustenance for their life is provided by other natural resources in the habitat. Therefore, when a tribal has to leave his native place, he not only loses his land but is cut away from the natural resources which have been providing him the bulk of the needs of his life. But these resources, according to the law of the land, are not accepted as his social trust, instead they are treated as property of the State on which people have no rights. If they are using

the resources, it can be so only by the grace of the government, with or without explicit knowledge or understanding about the same. Therefore, he can get only some compensation for his land. In this situation, when a tribal is forced to move out from his place after paying him just the compensation for his land, justice is not done even in a very limited sense. This is not all. In the existing law only personally owned land and property find a place, other natural resources and environment are not even mentioned. Therefore, the law of land acquisition is totally out of tune with the situation in the tribal areas.

### Disregard of the Basic Human Rights of the Tribal Society

17.24 When a tribal has to move out from his original place and go somewhere else he is cut away from his environment. The age old relations get snapped and their community is scattered. In this way, as a direct consequence of displacement in the tribal areas, both the individual and the community reach the precipice beyond which their destiny becomes destruction. This situation is highly unjust both for the individual and the community. It is in the context of the possibility of such injustice that special provisions have been made for providing effective protection to the tribal people in our own country at the national level and also for the world as a whole at international level. In the Convention of International Labour Organisation, there is categorical assertion of the right of the tribal people to continue to live in their traditional habitats. It has been accepted as a basic human right of these communities. Almost all the countries of the world including India has signed this Convention and accepted the protection of these rights of the tribal people as a special responsibility of their governments. The right of the tribal people to continue to live in their habitat in fact is the foundation of their right to retain their identity as the community. Therefore, this right stands much higher in the scheme of human rights compared even to other fundamental rights.

17.25 A variety of rights in respect of the weaker sections and minority communities fortunately have been accepted in our Constitution and special provisions have also been made in that regard. The provisions in respect of the tribal communities are in particular much more specific in which all aspects in their life have been kept in view. The provisions for enabling these communities to lead their life according to their tradition and to mould their social system suitably according to their own will in keeping with the needs of the changing world around are specially noteworthy.

The Sixth Schedule of our Constitution is almost an ideal frame, according to which the local community is fully competent to manage all its day-to-day affairs which includes the command over resources and their right to use the same. And without the consent of the community, even the State or the Central Government cannot make any change in this regard. This basic spirit of our Constitution about the tribal system is much wider compared to what is provided for in the International Convention on the tribal people.

17.26 But even though this spirit is clear in the Constitutional schema unfortunately it has not been made explicit and elaborate for all tribal areas in the country except those in the Sixth Schedule. The main reason was the widely different situations prevailing in the tribal areas spread almost throughout the country. That was why the Governors were given the responsibility under the Fifth Schedule of the Constitution to establish a suitable system in accordance with the special situation as may be obtaining in each area or even for each community. As I have referred on a number of occasions earlier, the Governors have not discharged the grave responsibility. In fact, the basic spirit of the Constitution has not even been understood. That is why except for the tribal areas under Sixth Schedule, all sorts of laws and regulations have been superimposed on other tribal areas, many of which not only ignore their traditions but are blatantly violative of them. The biggest anomaly is that the basic right of the tribal people to maintain their identity as a community and to adopt the system according to their will is nowhere in sight. There is no mention in any law whatsoever about the right of the community over the natural resources including land, its dependence on them and their intimate relationship which together form the base of any social system. And when any action is taken by the government or others within the frame of such a legal system, the law may be followed, but the spirit of the Constitution is ignored and the basic human rights of the people are violated. The root cause of this anomaly is that the State has ignored its responsibility. The tragedy is that the price of this lapse has to be paid by the tribal people, the grave responsibility of whose protection rests with the State. Can there be a bigger irony?

#### Development and the Right to Life of the People

17.27 At this stage a question arises that even if the law is changed in deference to this basic right of the tribal people, can we ignore the larger development processes which are informing not only our country

but the whole world. Will it be proper to ignore that the tribal people also have a right to participate in this great voyage of the human civilization? And if it is conceded that their participation in that global process is necessary, then if there are some benefits, some risks are also inevitable - the two go together. It is generally accepted that in this process of development somewhere some people will have to face some difficulties and some inconveniences. Therefore, will it be in order or justifiable to stall the process of development itself to avoid inconvenience for few people? And can it be really stopped?

17.28 The matter is not so simple. The questions such as 'who are the gainer and who are the loser in the process of development?' have become very important. It is necessary to discuss them threadbare. The questions cannot be postponed by allusion to general principles. As we have seen in the previous Chapter there are no simple answers to these questions even in ordinary situations. And when the whole tribal society is affected, when an entire community is pushed to the precipice of destruction, it is no longer a simple question concerning a small number of individual. It is true that the resources in the tribal areas today are required for national development. But the ordinary tribal is not in a position to lead his life without those resources. Therefore, the basic question is whether the process of national development can be continued even by depriving the tribal people of their right to life? Can the Wheel of Development continue to move on trampling and shattering the tribal system? And can this be allowed to continue? Here is the question of the most basic right of an individual, the right to life, here we are face to face with the question of social justice. And above all here is also the question of cultural and civilizational obligations and our faith in human values.

### The Basic Question of the Direction of Development

17.29 The issue of development is not as simple and straight as appears from the way it is posed. 'What is the real nature of development?' is a question which has been deliberated with all seriousness through the ages in all cultures and civilizations. A sharp debate about the concept of development is currently going on in all the countries of the world. Moreover, a serious question has arisen in our country on account of the growing burden on our natural resources and consolation of dualistic socio-economic situation which are directly related to the perception of development being pursued. Can we really call what goes today by the name

of development as real development? We have seen earlier that till some time back the plantation of so called economic species in place of the natural forest was considered as development of forest. The tribals were forcibly removed from those areas in the interest of what then was considered as development. But now everyone concedes that it was not real development, it was a serious mistake. A debate is raging throughout the world about the way indiscriminate industrialisation and centralisation in the western countries has led to the destruction of environment. Many sensitive people in the so called developed countries accept that whatever was considered as development till yesterday cannot be considered as development today.

17.30 In our country we are simply copying the West in the matter of development. What is happening is that the people who are holding the reigns of power in our country, those who are responsible for planning economic development in the country, are also the beneficiaries of that development. They are not required to face the wrong consequences of that development; even its realisation is missing. And even where realisation exists, the stark reality is ignored by using the garb of principles. The backlash of development is being borne by the poor, particularly tribal people in the tribal areas. These adverse consequences and the suffering of the people for the planners are merely a set of words and a few expressions. They can also assume the form of a dialogue full of emotion and pensive visuals which may move them to the brink of shedding tears; they may also give exhortations after ensuring that their own comforts and luxuries are not touched, and tell in a philosophical vein, that some one after all will have to bear with some trouble here and there. And again realising their grave responsibility, they may proceed to concede with all seriousness which they can muster for the occasion that something has to be done for them. They may also promise and take a solemn resolve that something shall be done for them as soon as possible!

17.31 All these debates have only one result. The decks are cleared for preparing the plans so as to ensure that the Wheel of Development moves still faster and that there are no obstacles in its way and everything falls well in line. But by the same token, the poor and the tribal are left with nothing in their hands except the expressions of their goodwill and their promises. Can they live on those airy artifacts? He has to face the backlash of their deeds directly. How to survive is the big

question which stares them in their faces, they cannot see anything ahead of them, except disorganisation, destitution and destruction. 'Is this their fate?' is the unanswered question which continues to haunt them day and night!

### Internal Colonialism - Inevitability of a Fourth World

17.32 This question can be honestly answered only when we present the basic premises and its logical consequences in simple and clear terms which can be understood by the common man. In the first instance, it is necessary to have a clear idea about the process of the development as it actually unfolded in the West. The western perception of development is closely linked with the production of goods and consumption of energy. Higher the production, more advanced is the country. There were some preconditions for this consumerist paradigm of development being adopted by these countries. First, the western countries tried to acquire monopolistic control over the natural resources of the whole world for their development. They succeeded in this to a large extent by the use of military power and establishment of colonial authority. Their command over the global resources continues even today, albeit in a different form.

17.33 Secondly, in their obsession for acquiring monopoly over the natural resources, the western countries not only ignored the rights of the local people, they even indulged in genocide and captured the resources of large continents. Today a small population in the developed countries is having monopoly over the bulk of the global resources; it is they who are indulging in arbitrary exploitation.

17.34 Thirdly, the western countries acquired command over the economic system of some of the advanced countries of that age like India and China and subordinated their economies to their home economies. The colonial regime destroyed the industries of our country and created a sheltered market for the production of their own countries. They robbed the skilled workers of their potential and transformed them in crowds of unskilled labourers whose only duty was to provide unskilled hard labour for the peoples of the new world. A crucial parallel theme of development of the first and the second worlds has been the establishment of the third world where all the illeffects of the development in the first and the second worlds were being coolly transferred. Then the benefits of development came to the share of the first and the second worlds while the horror of

its backlash had to be borne by the third.

17.35 And when the concept of development of such western economies and their lifestyle are accepted as a model by the elite of the third world, then its logical consequences cannot be avoided. Just as there was the need of the dustbin in the form of the third world for the development of the first and second worlds in the same style there is now the need for a dustbin for the rubbish created by the development in the third world. Now there is no empty place left on the globe for locating this dustbin of the third world. Therefore, this dustbin will have to be found within the country in the form of a Fourth World - this is a logical corollary of the present paradigm of development. The rights over resources in our country, the present style of their use and the legal frame relating to these aspects can be understood only in this background. That is why today the traditional rights of the people over natural resources are simply not recognised. The resources in the tribal areas are being perceived as the property of nation and not as the basis of people's living. Similarly in other areas, land is personal property and not a means of livelihood of the people. A small section of the population is acquiring monopoly control over these resources in the name of development - this is the new India of about fifty million people. The remaining people in the country are citizens of the Fourth World, who firstly do not have any rights over those resources and even where there are some, they are being finished at a fast pace.

17.36 This concept of development necessarily leads to some questions which must be satisfactorily answered. Is it necessary to create Fourth World in our country? And in particular can this be considered as the destiny of the tribal areas? If not, then can this process be allowed to continue as such in the tribal areas without caring for its consequences? If this position is accepted, then it is clear that it will necessarily mean a great injustice for the tribal people and gross violation of their Constitutional rights. The tribal people cannot be deprived of their right to life by paying some money in lieu of the means of their livelihood. In fact, that whole legal frame itself is wrong in which the right to life of the people and their survival as a community is being violated. Those people, who are being forced to move out of their homes on the strength of payment of some money have a right to ask the purpose for which they

are being put to that ordeal. The issue of 'public purpose' is directly linked with this question. Public purpose cannot be accepted as a mere game of numbers. The right to life of some persons cannot be compromised or bartered just for providing more comforts of many people. The right of the tribal people to survive as individuals and as a community is a much high, right which cannot be taken away just like that.

#### Dialogue with the People for Development and their Consent

17.37 There is only one way to get out of this tangle. The tribal people should have a right to ask questions such as what after all is the objective of development? What is the purpose of different developmental projects? And what is their place in the new developmental frame?

17.38 When a developmental project is taken up in a tribal area, a number of situations can arise in that regard. In some places, as in the North East, the tribal people may not be ready for an industrial project being started in their area. According to these people "We will not be able to participate in these projects. Therefore, people from outside will come and they will become a dominant group. We do not need these projects now. When we feel that our people are ready for participation in these projects, we ourselves will come forward with the proposal for establishing that industry". The situation in North East is different. There are tribal majority States in the region. They can take their own decisions. Moreover, the system of self-governance at the village level is still continuing in these areas. The people still enjoy full rights over all the resources and the land within their respective territories. Therefore, they are in a position to prevail upon others to agree to their proposition.

17.39 But the situation in the tribal areas of middle India is quite different. In their case the tribal people are not associated in the decision-making process about the establishment of various projects in their area. Nevertheless, when a project is taken up in a tribal area there are two types of reactions. When the people are asked to move out making place for the project, usually they are not ready for it. There are a variety of reasons even for this reaction. Firstly, they may have such a great emotional attachment with their habitat that they may not be ready to move out at any cost. Secondly, they may have a valid question to ask as to what they would do when they move to another place? They may not be prepared to take any risk whatsoever about their future. This is an ordinary human reaction which cannot be ignored.

17.40 There is however, a basic difference in these two reactions. In the first case, it is a question of emotion and not reason. In this situation there is no other alternative but to leave the project until such time that the people are ready to move out. In the second case also it is a duty of the Government that they should have a further dialogue with the people, to place before them more facts so that they appreciate the issues involved, assure about their own future and lastly instead of merely making some promises, do something concrete so as to earn their trust.

17.41 One thing will have to be kept always in view even in this approach. The authorities must be clear that they are not being taken up the garden path by making some promises which are not real, that they are not being seduced to move out knowing fully well that yender lies a blind alley and that under the guise of convincing them, they are not being indirectly told that there is no other alternative and thus are not being forced into a situation when they may be obliged to accept the proposition. These are not mere promises, they are the experienced reality of the people. They must not be repeated at any cost. Whether people will agree to move out of their place or not, whether they will agree to give their land or not, the final decision in these matters, which are vital for the identity of the community and their life, should be that of the people, that too after fully understanding the implications; it must not be superimposed by anyone on any ground. The decision must be with full and free consent of the people, nay, the decision should be in a milieu of happiness imbued with a new hope, new light, and full confidence in the self. Only then can it be said that the Constitutional rights of the people are being fully honoured.

#### Negation of the Entitlement of the Tribal People in Development

17.42 Now the question is as to what are the difficulties in accepting these principles? Whatever has been done in the tribal areas, so far has been done without due regard to these principles in full knowledge of the facts that the tribal is being deprived of whatever he has and that his community is getting disorganised? What conclusion can one draw from this unhappy state? Honestly speaking there is only one conclusion and that is that the basic entitlements of the tribal, which has been enshrined in our Constitution, have been denied to them.

17.43 There can be two interpretations of the negation of entitlements of the tribal people. Firstly, whatever was due to the tribal has not been given to them. To that extent, there is a saving on that account in every project. In our words, the actual cost of the project was less than its real cost. Even here there can be two possibilities. The project may viable even after fully providing for the entitlement of the people. In this case there is no reason why the tribal should be deprived of that entitlement. The other possibility is that after taking into account his entitlement the cost of the project may become so high that all calculations become topsy-turvy and the project is adjudged as non-violable. In that case why should such a project be taken up at all? And if for some reasons it is necessary to have such a project, then it must be explicitly decided as to who will bear the burden of its non-viability. In case that burden is passed on to the tribal people without his knowledge and without even acknowledging it, it will not only be unjust but amount to cheating of a simple people.

17.44 It is a matter of deep regret that this is what is happening today. The entitlements of the tribal people are being ignored in all cases. Therefore, he is at a loss in both situations and it is the organised sector which stands to gain in the end in all deals. That is why there is growing affluence with almost no limits on the one hand while the vast majority faces unrelenting destitution and deprivation on the other. Such negation of entitlements cannot be justified even with reference to laws and the rules of the modern system itself. Therefore, to tamper with the due entitlements of the tribal people on any account whatsoever is wrong, unjust and also unconstitutional.

17.45 It is thus clear that if the process of development in the tribal areas continues as it is and is further intensified, which appears to be on the cards, it is likely that a few persons from amongst the tribal people will soon get some benefits, but as far as the tribal community and the bulk of the tribal people are concerned, it will mean nothing but disruption and destitution. The spree of development in the tribal areas without any consideration for the situation of the tribal people living there, is in a way declaration of war against those people. So far about fifteen per cent of the tribal people have come under the sway of that war. One does not know how many of them have been 'killed', how many of them have got 'wounded' and are still crying for help and how many of them are roaming about in the unknown wide world without any friends, helpless and resourceless. No one has even cared to know what has been their fate!

17.46 The question now is that how long will this undeclared war continue in these hills and forests against those innocent people for no fault of theirs, simply because they happen to be living in an area which has rich natural resources, which are now required for the development of the nation. At the time when the tribals resisted the intrusion of the exotic system and also when they fought for the establishment of their rights, they were presented with certain policies and given some promises by the representatives of the new system. All these unfortunately have proved to be wrong and even knowingly belied. Today the situation is that the tribal people cannot trust anyone. How can they after all believe anyone, when their experience is that they have been getting endless promises one after another which have all been broken. In the meantime, the loot of all that they had continued, they were forced to abandon everything which they could call their own. Now trust cannot be regained merely by talks and promises, something concrete has to be done, which they can see, which they can feel and which they can realise that it is their own.

17.47 The State has been given the responsibility under the Constitution to provide necessary protection to the tribal people. As we have seen earlier, wherever the tribal people are facing displacement, they are not getting justice even in those cases where the action ostensibly may be in accordance with the law, which itself is highly doubtful. Now they are not getting the protection provided for them under the Constitution. The most important reason for this situation is that in these laws no attention has been paid to the situation in the tribal areas. This has two consequences. Firstly, the existing law itself is against their interests. Secondly, suitable laws necessary for providing them due protection have not been formulated. In this way the Government has not discharged the responsibility entrusted to it with regard to the protection and promotion of tribal interests. If the situation continues as it is, there cannot be much hope in this regard even in future.

17.48 But there is still time, the situation can be changed. But it will be necessary to change the entire legal system of the tribal areas. We have already discussed about their rights over the natural resources. The right over resources is directly related to the right to life; therefore it is fundamental. The law about acquisition of resources and law, as it stands today, is unconstitutional and is also violative of the human rights of the tribal people. Therefore, it needs to be completely changed. The people should have the right to determine what can be termed as public purpose. The right of the tribal people to continue to live in their

own habitat should be accorded formal legal recognition as a basic human right so that there is full clarity on this issue. Monetary compensation, or even providing one job in each family cannot be construed as participation of the tribal people in development. Unless the tribal people are assured an honourable position in the new system, their participation cannot be real. The question is whether the Government will take the initiative to discharge this grave Constitutional responsibility.

### The Reaction of the Tribal People

17.49 The people throughout the tribal areas are in a state of big confusion. They cannot call those natural resources including land as their own on which they have been subsisting for ages and which they have been believing as their own. The new system is not prepared to accept their rights, not even their traditional use. On the other hand, the State and other elements are consolidating their command over the same resources in the name of development. The tribal people do make attempts to assert their rights, but mostly they are unsuccessful. Having been deprived of their rights over the resources, they are forced to roam about hither and thither just for making a living somehow.

17.50 As we have seen above that great injustice have been done to the tribal people in this regard. When big projects are established the local people are forced to move out from there even without any token gesture simply because their rights are not recorded anywhere. According to the government figures, only 8 families were displaced while establishing the big iron-ore project in Baladila in Bastar. Where the remaining people gone, nobody knows. When the tribal is obliged to move out from one place, he is to seek shelter elsewhere specially in a forest which is his familiar habitat. But they are not allowed to live in peace even there. For example, no one cared to ponder about where the Jenu KURU, who has been living through the ages by collecting honey in the forests in Karnataka, will go after those forest came under submergence. Why should anyone bother - after all the forest belonged to the State. When the displaced persons from Kadana in Rajasthan took shelter in the forests of Pratapgarh, it was not acceptable to the government. The result is that the forest department starts a special drive to remove the tribal from that forest every year before the onset of monsoon when they start preparing their fields for the next season - no one knows where should they go? The tribal people living in the remote forest areas in Madhya Pradesh when faced with

the spectre of submergence by Hasdeo Bango continue to plead with every one who came their way with folded hands that where will they go, but there was no reply. When they located a suitable place in the nearby forest and took shelter there after the reservoir was filled, the government came down upon them with full force to evict them from there for it was a reserved forest. And the displaced people of Ukai dam, commissioned for bringing prosperity to Gujarat are left with nothing now except their bodies and are obliged to trade their honour in the open market of Surat town.

17.51 What should be said about this justice and about this system? What should we say about this process of development? This is well known to everyone that when a tribal is cut away from his environment, the community disintegrates as people get scattered and the individual does not get anything except deprivation and destitution. There are comprehensive provisions for the protection of the tribal people in the Constitution but they have no meaning for them. They are losing everything in the face of wrong laws and an unjust system, hapless and helpless.

17.52 But this state of haplessness and helplessness cannot continue forever. The reaction amongst the people is natural. The people have resisted against their displacement, they are still resisting. The very first resistance of the tribal people was against governmental occupation of their forest, the second in the series was against alienation of land. But now there is growing wrath against developmental projects - small and big. This is bound to become sharper. It is clear that in case of tribal people, the government has not only failed to discharge the ordinary responsibility but also has failed to discharge its Constitutional responsibility. It is the tribal people who have to bear the brunt and face the consequences of that negligence which is wrong and patently unjust. Therefore, the tribal people in a number of cases now are claiming that whatever may be the law, they will not compromise on their right to life. This reaction in their situation is natural; it is also a human reaction. It will be necessary to see discontent, and even revolts in the tribal areas for this perspective. It is their fight for their rights. In some places, the struggles have acquired extremist form. But it is not proper to treat every struggle of the people for their rights as extremist activity as is generally done by the administration. Extremism is the outcome of a situation where attention is not paid to struggles which are justified.

17.53 The people in a number of tribal areas have tried to place before the government through a variety of movements their side of the case against displacement. But it appears that in a hurry for development not much attention is being paid to them. The people are still facing the backlash of development in an increasingly severe form. There is no dialogue about the policy of development which will be followed in these areas. Consequently there is no clarity about many crucial issues. Therefore, some decisions have been taken by the people themselves on their own, in some cases they are taking a solemn resolve on some points. For example, they are asserting that they have a right over the resources, on which they have been depending for their living so far. No one has the right to put those resources to any other use unless it has their concurrence and until they acquire another base for making their living.

17.54 The affected people are not prepared to allow the developmental programmes to proceed further only on the basis of promises. They are also worried about the future of the entire tribal areas. If development continues in its present form, there will be no place for them to stand on anywhere. This is no longer something of just pure imagination or a matter of principles. The terrible reality is staring in their faces. So far they have been facing the backlash of development unknowingly - now they are not prepared to bow their heads before that demonic process. Since the first deadly blow of development is being faced by them, therefore, it is their natural right that they should be partners in deciding about the form of development and also its style.

17.55 There are people's movements at a number of places on the issue of displacement. Even many of those people who are not displaced as yet but who are worried about tomorrow are also joining these movements. And displacement comes in countless forms and in many contexts - from the forest, from land and from their ancestral homes. The people have made an important point with the government in these movements. Before considering about the future style of development in the tribal areas and the path which should be adopted for moving ahead, appropriate arrangement must be made in all those cases when the people have come under the impact of the projects already completed or which are still continuing. There is no scope for dilly-dallying. If a project has not taken the responsibility so far and if it is not in a position to do anything for the affected people, the government should accept the responsibility. There is one more point.

A project is, if at all, responsible only for those directly affected by it. The people who are affected by the associated activities after the establishment of the project or may have been displaced in that process will also need full support and rehabilitation. The government must assume this responsibility. Until this task is complete the people assert that they will not allow any further work to progress; this is their firm resolve.

17.56 In this way it is clear that an immediate solution to the problem of displacement of the tribal people is necessary. The people are also searching for their own solution. Their anger is justified, their struggle is struggle for justice. The issue should be resolved in an atmosphere of cooperation and must not be allowed to degenerate into confrontation. This does not mean that all development works should be stopped and the tribal community should remain in the original state. It has only one message, that is, the system in these areas should be moulded in such a way that the people become partners in developments, all developmental works should be taken up with their consent and wherever it is not possible to get their consent that work of development should not be taken.

17.57 The position in this regard in our Constitution is quite clear. The development should not be superimposed on the tribal areas without the willing participation of the tribal people. It has been accepted as a national responsibility that a dialogue shall be established with the tribal people on terms of equality and that instead of waging a war against the people in the name of development the people should be invited for participation in the process of development. This atmosphere of goodwill can be created only when full attention is given to those who have already suffered and are groaning. Instead of being in a hurry to move on, the people should be made partners in the development. It may be necessary to slow down the pace of development, it may be necessary to stop it for a while. But if caution is not exercised, then it is possible that in the face of simmering discontent and open revolts in the tribal areas, the Wheel of Development may crumble under its own heavy weight.

## DISPLACEMENT - 3

Dams on Narmada ValleyBackground

Amongst the developmental projects in the country particularly those which effect the tribal areas, the dams in the Narmada Valley are particularly important which deserve to be discussed in some detail. Under the existing laws, the displaced persons do not have any right except compensation. But inspite of this limitation, some arrangements have been made for their rehabilitation in a number of projects. The Narmada Water Dispute Tribunal, for the first time accepted formally in principle, while giving their award, about the distribution of Narmada waters, that the displaced people should be rehabilitated and they also declared it as the responsibility of the State. After this award, when the World Bank agreed to give a loan for the Sardar Sarovar and Indira Sagar Projects in this valley, some conditions about rehabilitation of displaced persons were also incorporated in its agreement.

18.2 It is estimated that there will be 30 big projects, 135 to 400 medium projects (the different figures are as per projections of the government and the World Bank) and more than 3000 small projects in the comprehensive development plan of Narmada Valley. Out of the big projects, Tawa (Hoshangabad, Madhya Pradesh) was completed in the '70s, another big project Burgee (Jabalpur, Madhya Pradesh) is now more or less complete. In the same series, the other two projects which have been sanctioned are Sardar Sarovar (located in Gujarat as a joint project) and Indira Sagar (Madhya Pradesh). The work on the dam of Sardar Sarovar has been started.

18.3 The number of villages likely to be affected by Sardar Sarovar is about 248 and by Indira Sagar about 254. There is uncertainty about the number of people likely to be displaced. It is estimated that about

one lakh people will be affected by Sardar Sarovar and even more by Indira Sagar. But if account is taken of all the projects likely to come on Narmada, the composite Narmada Valley Project will be the biggest project in the world. But this big project will also have another record that the number of displaced people by an project will also be the largest in the world.

18.4 The States of Gujarat, Madhya Pradesh, Maharashtra and Rajasthan are partners in the Sardar Sarovar project. The main dam is being constructed in Navagam Gujarat. The responsibility of its construction rests with the Gujarat Government. This project is basically an irrigation project but some electricity is also likely to be produced. The benefit of irrigation from this project will largely go to Gujarat but some benefit is also expected to reach Rajasthan. All the four states have their share in the electricity likely to be produced by this project. The responsibility of rehabilitation of the displaced people rests entirely with the Government of Gujarat.

18.5 The number of tribals amongst the affected people by Sardar Sarovar is about 70%. Many of them live in such areas that they do not have much relationship with the outside people. Their living does not depend on agriculture alone -- forest, land and river are the three other major sources.

#### Plan of Rehabilitation

18.6 Two important principles have been adopted about the affected people in the case of both Sardar Sarovar and Indira Sagar projects. Firstly the responsibility for reasonable rehabilitation is that of the state government. The second most important thing accepted in this decision is that the rehabilitation of agriculturists can be possible only in agriculture. And in this way the basic principle of 'land for land' has been accepted. The displaced people will be given land for land for their rehabilitation.

18.7 Under the policy of rehabilitation referred to above, some decisions were taken in the beginning itself. But the affected people of Narmada Valley have also been making some suggestions from time to time, some of which have been accepted. Broadly, under the latest programme of rehabilitation, every family has been promised a minimum of 2 hec. of land. Moreover, in Gujarat all major sons of 18 years or more in the affected families have been deemed as constitute a separate family. In this way, all the families will get land for land, but many of them can get even

more land than what they lose. The real spirit of this decision is that the people should attain a better condition after displacement compared to their earlier position. In other words, the displaced people will be in a way partners in the benefits of development.

- 18.8 The Government of Gujarat has also accepted some other concessions besides those contained in these decisions. There are three new things. Firstly, the affected landless agricultural workers will also be given 2 hac. of land. Secondly, all those people who are in unauthorised occupation of government or forest land will also get the same benefits as the regular lease-holders. Thirdly, if land has to be purchased for providing land for land the government will pay the difference between the purchase price and the compensation as a grant. In this way attempt has been made to protect the displaced persons from legal anomalies and uncertainties of market.

#### Seeds of Discord

18.9 Notwithstanding these important decisions about rehabilitation, no decision has been taken on a number of suggestions made by the affected people. I have also been in touch with the three state governments and the Central government on some issues. Some progress has also been made. But in the mean time, a big change has come about in the attitude of the affected people particularly of the Sardar Sarovar. There are a number of reasons. Firstly, the gulf between the promises of Government, declared policies and the field realities has been growing. Secondly, when the people saw that they were facing difficulties in the very beginning notwithstanding all sorts of promises, that there were no satisfactory replies to their questions, then what will happen later was a question which started bothering them deeply. The result is that at this time there is a big people's movement against the dam in Narmada Valley. At a number of places people are stating categorically that they are not prepared to leave their homes. But on the other hand, the work on the dam is continuing.

18.10 The people's opposition to these projects is on a number of counts. Besides the issue of environmental impact, questions are also being raised about technical and economic aspects. But there is also on practical question from the side of the affected people. Will rehabilitation be possible in accordance with the spirit of the policies accepted in principle for rehabilitation? The second important question is about the policy itself particularly in relation to the situation of the tribal people. Has the condition of the tribal people been taken into account in this

policy and ~~will~~ it be possible to do justice to them? The third question ~~is about~~ people's basic rights. Even if the promises of rehabilitation are in order, do the people not have the right to refuse to move out from their place.

18.11 The government has accepted the responsibility for the rehabilitation of the affected people, some major decisions have also been taken and some action has also been initiated. But there are two things there. Firstly, the government policies and associated actions on paper usually appear to be very neat and fair. But in the field situations are so complex that it cannot be said as to what extent the problems of the people will be really solved and how much benefit they will actually get. Secondly, our law, system and policies are not in consonance with the situation of the tribal people. No initiative has also been taken so far to remove the dissonance. The same holds good with regard to rehabilitation as well. Therefore, notwithstanding the declared policies about rehabilitation the experience so far cannot be said to be very good.

#### One Region, Three States and Problems due to Three sets of Policies

18.12 A number of policy issues remain unresolved even now notwithstanding prolonged discussions and a strong people's movement in the case of Sardar Sarovar. The area of submergence of Sardar Sarovar falls in three States. In the middle of this tract on the side of Narmada are the States of Madhya Pradesh and Maharashtra. The lower portion is located in Gujarat while the upper one in Madhya Pradesh. The state boundaries do not have much significance for the daily life of the people here. One cannot even realise as to when and where their community spreads across the invisible lines. Whatever may be the formal position, the first principle of rehabilitation plan of Sardar Sarovar in practice should have been that it will be the same for all residents of the whole project area. Therefore it is natural for the people to expect that the dealings of all governments with the displaced persons will be the same and they will get the same benefits notwithstanding the area to which a person may originally belong. Not only I have personally written a number of times on this issue to the States, but this has also been one of the major demands of the people. All the State governments in principle have conceded this point. Some of the specific suggestions in this regard have also been accepted. But the point has not been fully met. After all sorts of discussions something got stuck up somewhere. In this way, in the field there is one policy of rehabilitation in Madhya Pradesh, another in Maharashtra and yet something different in Gujarat. In view

of the differences in the policies of the three States, people do not have correct information and there are a number of misunderstandings as well on that count.

### Tangled Issues of "Who is Displaced"

18.13 Now we will consider another basic issue about policies. The first necessary step in formulation of a policy about displaced is that "who should be deemed to be displaced" must be clearly defined. Rules have been framed in this regard and village-level surveys have also been conducted accordingly. But when the list of affected people was prepared on the ground, a number of deficiencies in the rules came to light. Action has also been taken to remove some of the anomalies. But in many cases, there is no clarity even now even though the work relating to the removal of people from their original homes and resettlement elsewhere is now more than 10 years old. Consequently the people, who are really affected, but are not covered under the rules and recognised as, are in deep trouble. These people present their woes before everyone who visits there, be it a Minister or an officer or a social activist, they also get promise but the basic issue remains where it was.

### People Surrounded by Water

18.14 There are a number of spots in the area of submergence of Sardar Sarovar which will remain outside submergence yet they will become islands after getting surrounded by water. According to the present rules, the people living in these locations are not treated as affected because those places will not come under submergence. But where will they live after the dam is filled? Dialogue has been continuing in this regard for more than 3 years. The government's reply is to the suggestion always in affirmative that these people should be accepted as affected, but the outcome is nothing.

18.15 There are a number of other issues with regard to the area of submergence. For example, the decision about a person being affected or not depends on the fact whether his house will come under submergence or not and what proportion of his land holding will come under submergence. Some rules have also been framed about acquisition of land in those cases where only a part of the holding comes under submergence. But the rules are not satisfactory and the people are in a big trouble. They are complaining that if a small piece of land does not come under submergence what they will do with it? In many cases, the displaced persons have been forced to move out to a new place leaving behind the land likely to get surrounded by water or partly acquired lands. But according to the rules,

the acquisition of such lands by government is not obligatory. In this way there is no provision for acquisition of land left behind, nor is there any provision to give land in exchange.

#### The Shadow of Sardar Sarovar and Indirectly Affected People

18.16 Even as the issues concerning the identification of affected people in the submergence of Sardar Sarovar has not been fully resolved, the problem of affected people under its shadow related to associated or following activities is coming into sharp focus. There is much thinking as yet about their problems. The construction of an extensive network of big canals has been started for which lands are being acquired from thousands of people. But these people have not been included in the category of people affected by Sardar Sarovar. Their lands are being taken following the normal procedure of the Land Acquisition Act. Whosoever is losing the land is becoming resourceless. That is not all. On the one hand, the compensation which a person is getting in this area for his land is about only Rs.2000 to 4000 per acre, which the government itself is purchasing in the neighbourhood lands for rehabilitation of affected people at the rate of Rs.10000 to 15000 per acre. This differenciation is not acceptable to the canal affected people. They are also claiming to be affected by Sardar Sarovar.

18.17 Another associated activity of Sardar Sarovar is the provision of alternative habitat for the Wild life of the valley. Arrangements are being made for creating a corridor for passage and for establishing a sanctuary at the end for the wild animals which will get displaced from the large area coming under submergence after reservoir is filled. A sanctuary has been established near this project at Dumkhal which will affect about 26 villages. How many people will have to be removed for this purpose from these villages is not as yet clear? The stand of the government in this case has been that this sanctuary is like any other sanctuary in the country. Therefore, action will be taken in accordance with the general policy in that regard. But this argument is not acceptable to the people of this area. They are seeing for themselves that they will have to move out to make way for the wild animals of the valley. Therefore, their claim is that they should also be included in the category of project affected people. According to the government it is not possible to accept all their claims. If they continue to add up the issues like this will they be able to stop anywhere. After all everything is connected with all other things and somewhere or the other a dividing line will have to be drawn.

18.18 While conceding the need for drawing the line somewhere, the reality of the shadow of the project cannot be ignored. Whatever issues have not come up by now may come up tomorrow, towards which the people are already pointing on the basis of earlier experience. How the people living in the down stream area beyond the dam, will be affected after the flow of water decreases as the dam is completed, is a big question which has not claimed any attention. In their case, on the one hand, the availability of water for agriculture and other activities is likely to be reduced and on the other hand there may be ingress of sea water as the current of the river becomes weak. By merely ignoring these issues the problems of the people will not get resolved. The accounts of the project of course will not be spoilt.

#### Injustice with Kewaria

18.19 The biggest injustice in relation to the identification of affected people has been done to the people in the six villages whose lands were taken in the beginning about 30 years back for establishing the residential colony and other infrastructure of Sardar Sarovar project. These people had to leave their places after getting the compensation which was determined according to the rules prevalent at the time. Most of these people received very small amounts as compensation, which was used up in no time. Now these people are leading a very miserable life. Their biggest complaint is that while after their displacement from their lands, they have been living in poverty, yet in contrast just before them on their own lands palatial buildings have come up where officials, officers and guest of the project have all sorts of comforts. What is their fate? These people have not been declared as affected because they do not come under the submergence of Sardar Sarovar. The planners have no concern with this fact that these people had to be displaced so that the work of Sardar Sarovar could be started. The apprehension of the administration that if they, agree to reopen their case, a number of other people, who are affected by other projects and who are roaming about without any support but whose cases have been settled in the eyes of the government, may raise the demand to reconsider their entitlement for rehabilitation.

18.20 Their fear is well founded. It is not necessary to go far to confirm it. Thousands of displaced people by the Ukai dam on Tapti river in the same area are still roaming about without any support. Even though the area of command of that dam is now prosperous, yet trade in bonded labour and the honour of helpless people is flourishing and open. The government knows all these facts. They are really affraid of these very people that

they may also raise the question of their rights if they hear about the concessions granted to people from Kewaria.

### The Spirit of Social Equity Violated

18.21 Can there be a situation of treater irony than this where the system, which swears by social equity, instead of taking effective steps to undo the injustice on their own should be afraid of the fact that those who suffer because of injustice, may not raise the issue of justice. Is this how they would define justice? And the people who have been affected by Ukai or those who are likely to be affected by the sanctuary, mostly belong to scheduled tribes whose protection is the responsibility of the State. Is this the sense of responsibility towards the tribal people of the system--be it the Centre or the State?

18.22 One thing which is clear from this situation is that the system is keen to ensure that its purpose is served donning the cover which may suit the occasion. It is not concerned with justice or injustice; it has no interest either. Will a person who believes in justice wait even for a single moment to end injustice after it comes to his notice? The case of people of Kewaria can create nothing but disbelief amongst the people about the claims about concern of justice by the system.

18.23 There are a number of other issues in relation to the preparation of the list of affected people, which is neither necessary to relate here nor possible. The fact is that the list of affected people of Sardar Sarovar has not been prepared in full as yet. In a number of cases, there are big differences between the list prepared by the government and the claims of the people about which there is great dissatisfaction. Now about 80% of the people in the affected area have taken to the path of non-cooperation. In this situation it is not possible that any further progress may be made in relation to the preparation of these lists.

### Who is Entitled for Rehabilitation

18.24 After the preparation of list of affected people the next important question is how to determine the entitlement of rehabilitation. The first major difficulty in this is that there is a big difference between the picture as revealed by the government papers and the situation on the spot. But whatever is recorded on the paper is legal. Many attempts have been made to remove these differences, but till now the relevant action has not been given any legal form nor a proper procedure has been decided for this. Therefore, if the government officials even accept something orally in a discussion, it has no meaning.

### Joint Khatas

18.25 In the tribal areas usually it is the name of the eldest in the family which is entered in the record of rights about land. A family may comprise 2 to 4 brothers and their children, many of whom themselves may be major. In these cases, if one is to act according to the paper record, only that person will have the claim whose name is entered in the record. So far as compensation money is concerned, the people can easily divide amongst themselves. But if the government accepts the principle of giving a minimum area of land to each family or 'land for land', it is not clear as to how the claims of more than one brother will be settled at that time. There is great uncertainty amongst the people on this count. Madhya Pradesh is worst affected in this regard where the entitlements of land-owning people and landless are entirely different. The position of land owner in a big joint family is worse than that of unauthorised occupant of land. That is not all. In a number of cases, happy families have got entangled in disputes, which are abetted by outsiders or even their own selfishness arising from the fact that the right of one brother may have been accepted on the basis of record while others may have been declared as landless on the same ground.

### Yearly Leases

18.26 A number of people in the Narmada Valley depend by cultivating lands in the river-bed which come out of river-water after it recedes. in post-monsoon period. In some cases, they are given on annual lease, but in many cases no formal procedure is followed for this purpose. Since these rights are not recorded, there is no discussion about them. But this is the most valuable land for those who live on the banks of the river. When this valuable resource is ignored, the whole basis of rehabilitation becomes doubtful.

### Visual Maps

18.27 Many maps of land in this area are visual. Therefore, the account of the land owned by the people is not correct. A number of villages also happen to be located in the forest area. Therefore no maps were prepared in their case. Some villages are not shown in any government record. Moreover many people have been cultivating forest or fallow lands for a long time. But no action had been taken by the officials to enter their names on those lands in the government record. Therefore, since their names are not recorded, their occupation is deemed to be illegal. Attempts have been made to sort out some of these cases. But even then the root cause of this problem is in the law itself and nothing has been done about it.

Therefore, whatever the tribal gets will not be his right, it will be a concession in his favour.

18.28 An important decision has been taken recently in this connection that those people, who were in occupation of land on or before a fixed date within or outside the forest, will not be entitled for compensation if their possession is illegal but they will be given an ex gratia of an equal amount and will also get land for land. But a number of problems remain even after this decision. The stipulated date with regard to the possession of land is different in different states. Secondly, the government record in respect of the land in the occupation of people is not ready. In this way, the basic problem even here is the same which we have discussed in detail with regard to the rights over resources. Therefore, there are a number of villages in some areas which do not find a place in government records. There is no clarity as to how these issues will be resolved in the field. In the end, can we say that justice has been done to those people who consider that their possession is valid yet they are deemed to be encroachers? The people are not prepared to accept these anomalies.

#### Compensation

18.29 We have already discussed some of the deficiencies in principles followed for determining the compensation of land, particularly in relation to the tribal areas. There are a number of points in the case of Sardar Sarovar about which people are not happy. For example, the agricultural fields in this hilly area cannot be prepared in a year or two. It takes generation to prepare the undulating land for agriculture. But in the accounts of government, all lands have the same value. There is no consideration of the long bund and the high dam which a field may have. Similarly the fruit bearing trees also do not count for much. Even the value of mahua, immli and mango trees may be between Rs.300 to 500. Even the value of fruits produced in one year is much more than this amount. That is not all. Even now a satisfactory common policy has not been framed for determining the compensation. Sometimes there is a talk about market price and sometimes about net income. We have already discussed in detail about these anomalies.

18.30 There are a number of problems in relation to compensation about dwellings. The way of life of the tribal people is entirely different. There are big baries with wooden enclosures. The structure may outwardly appear to be hut-like but may have long rows of solid pillars of valuable

teak inside. A suitable method of assessing the value of such dwellings has not been devised. In fact even appropriate norms for this purpose do not exist in government departments. There is only one explanation for all such gross anomalies remaining unattended--the difference of perception and disregard of the right to life of the people. For example the value of a tree in the eyes of the system is equal to the wood obtainable from it after felling. But for the people the tree is a part of their life support. The Government of Madhya Pradesh have decided to link the compensation of the trees with income, but it has yet to be formalised. In other States, this question has not even been considered. Similarly, the open space in the bari is the real place of living for the tribal people which, according to the system, has no value. These anomalies have no meaning in the process prescribed under the law. The people, therefore, are helpless before the unjust decisions of the court of justice. Therefore in their eyes, acquisition of land is the continuation of the same old process in which they lost their lands for one reason or the other through the use of force or decoit. To lose their homes and land and wander is their fate, whatever they may get is all right. Justice and injustice, both are meaningless terms for them.

#### People Engaged in other Occupations

18.31 Another big question in rehabilitation relates to those people in the villages who are engaged in occupations other than agriculture like Kewat and Kahars. These people are not landless labourers. No separate provision has been made for them in the rehabilitation policy. The government claims that these people will be given the benefit of schemes for poverty alleviation or self-employment so that they can lead a new life when they move to some other place. If we try to visualise what is likely to happen on the basis of the experience so far of employment schemes of the government, the economic rehabilitation of people like fishermen and boatmen appears to be a dream. The people of a village near Rajghat, who lies in the area of submergence of Sardar Sarovar in Madhya Pradesh tell that the boatmen, who lost their occupation some 10 years back when Rajghat was constructed, have not been rehabilitated so far and now there is even no talk about their rehabilitation.

#### Rehabilitation of People Dependent on Land--Many Tangled Issues

18.32 Even if we leave the question of those people aside, whose living is not related with land, the situation about rehabilitation of those who depend on land has also not been fully clarified so far. There are two categories of people dependent on land--the land owners and the landless

labourers. The Government of Gujarat have decided to give atleast 2 hac. of lands each to all the families belonging to either of these categories. Moreover all the sons, in the affected families who are 18 years or more, have also been treated as comprising a separate family. The Govt. of Maharashtra have also accepted this definition of family in their policy. But in a recent order they have clarified their earlier decision to the effect that the 18 year old sons comprising separate families will not be entitled only for a separate residential plot and financial assistance but not for land. In Maharashtra the landless are entitled to one acre of land for their rehabilitation.

18.33 Madhya Pradesh has also decided to give atleast 2 hac. of land or 'land for land' to all affected families. But like Maharashtra, the major sons of 18 years or more are deemed to comprise a separate family for the purpose of house site and financial assistance only. They will not be entitled for agricultural land. There is no provision for giving land to landless labourers for their rehabilitation in this State, which accounts for the maximum number of displaced people. Instead, the government proposed to help them to establish in other occupations like rest of the poor in the State.

18.34 I have been taking up the question about a common policy of rehabilitation for the displaced with the State Governments and also the Centre at different levels, both formally and informally. Everyone has his own limitations. The Central Government does not want to give any direction. Maharashtra has a law of its own for rehabilitation. Therefore it is not possible for them to do anything special for the displaced persons of one particular project. According to them if this principle is accepted for one project, other people from other projects will also start demanding the same, which will be difficult to refuse.

18.35 The argument of Madhya Pradesh is also on similar lines. Madhya Pradesh has not even brought all the existing projects in the State under the scope of its law. If they begin to speak about rehabilitation beyond what is contained in that law their problem is as to how will they deal with other people. Here it may be noted that the displaced of Tawa (A major project of Narmada system) are still roaming about in the forests. The people in the area of submergence of Burgee project on Narmada itself, on which work is still continuing, were forced to flee in the face of rising water without any facilities of rehabilitation. The work on Ban Sagar has been held up in its last stage on the issue of rehabilitation.

The state government will not be able to provide more facilities for displaced people of Sardar Sarovar in this tangled situation in the State. The general policy about displacement even in the State of Gujarat is not fully clear. As we have seen earlier, all the affected people of even Sardar Sarovar have not been treated at par for the purpose of rehabilitation. Accepting the responsibility for rehabilitation of affected people of other projects is a far cry.

18.36 The Governments of Madhya Pradesh and Maharashtra have yet another argument. If they provide the same facilities as promised by the Government of Gujarat to those displaced persons who insist on settling in their respective states, then they will not even think of going to Gujarat. They will demand, as a matter of right, the facilities of settling in their own States in accordance with the decision of Narmada Tribunal. Moreover, even the question whether the entire financial burden for rehabilitation of displaced people in Maharashtra and Madhya Pradesh will be borne by the Government of Gujarat has not been finally settled. Therefore, these states are not promising the same facilities as promised by Gujarat, least there is no incentive for them to move out to Gujarat.

18.37 Such an argument at the policy level and by the State are rather odd. And again we come back to same question whether our system believes in understanding the problems of the people, taking them in confidence and solving them? Or they feel that their responsibility is over, once some action has been taken somehow or the other, to fulfil the formality of the rule. The way the State Governments are moving in these cases makes it clear that they are concerned more about completing the formality and nothing else.

#### Experience So Far

18.38 The process of displacement in Sardar Sarovar started in 1960-61 with the acquisition of land of six villages including Kewaria and others in its neighbourhood. But the work of rehabilitation was started in Gujarat later some 20 years in 1979-80. So far only a few habitations have been set up. The people have been presenting their demands about the policy of rehabilitation and facilities from the very beginning. The State Governments have also been taking some decisions from time to time. Therefore the position so far is that all the displaced persons due to the Sardar Sarovar project have not received the same treatment in terms of quantum of compensation, rehabilitation grants and other facilities. The displaced person received the benefits according to the rules prevalent at that

18.39 We have already discussed the injustice done to the people belonging to the first six affected villages including Kewaria. They received initial compensation at the rate of Rs.50 to 250 per acre and nothing thereafter. Afterwards, a policy of rehabilitation was accepted after the award of the Narmada Water Disputes Tribunal (1984). But a variety of changes have been made from time to time even in the main programme of rehabilitation by the States. Upto 1985, the Government of Gujarat had been formally taking a stand that rehabilitation in accordance with the Tribunal Award or the World Bank Agreement will not be possible because of non-availability of land. But after 1985, there was clarity on this issue as a result of pressure both from above and below and the terms of rehabilitation have also continuously improved.

18.40 The first major issue was about the facilities of rehabilitation for the displaced persons of the 19 villages of Gujarat itself in respect of which even the work of relocation had been started. The Government of Gujarat was not prepared to accept the principle of land for land in their case because according to the Tribunal Award that principle was applicable only to those displaced persons who might come to Gujarat from Maharashtra and Madhya Pradesh. Therefore, even though the displaced persons of Gujarat were moving out of their places because they were helpless yet there was great resentment. In the end the government accepted in principle in November 1985 that the oustees of Gujarat will also get the same facilities as the oustees coming from the other two states.

18.41 The second question related to those people who did not have lands in their names. According to the Tribunal Award, the land holder oustees of Madhya Pradesh and Maharashtra were entitled to get lands in the benefited zone of Sardar Sarovar. We have already discussed about the entitlement of land-owning oustees. But the policy about unauthorised occupants of land. Afterwards in 1987 the principle of a minimum of 2 hac. of land was also accepted for them. So far as the question of landless is concerned initially they were not eligible for land. Later on a policy of assigning them 1 acre and further on atleast 2 acres has been accepted. In this way, according to the current policy all the oustees of Gujarat will get a minimum of 2 hac. of land. But even then a number of displaced persons were assigned lands according to the rules prevalent at that time. They have not received the balance so far. In some cases, the oustees were given less land because sufficient land was not available. It is estimated that on the spot every family has received less than 1 hac. on an average instead of 2 hacs.

18.42 Similarly the policy about land for land has also been changing. It may be noted here that the oustees are eligible for 'irrigable' land. But what is the meaning of irrigable land is not clear even till now. In some habitations the people have been given government lands after clearing the forest. But in their case even today it is not clear as to how much price they will have to pay for that land. Whereas they received only Rs.2000 to 4000 per acre as compensation of their good lands, it is said that the price of this new land may be about Rs.10000 per acre, about which people are extremely worried. Yet another contradiction has also appeared in the policy of land assignment. If a person gets private land for his rehabilitation, he is entitled to the difference between the purchase price of that land and the compensation as a grant. But if he gets government land, in which the government may not have to invest anything, it will be priced and that price will be treated as government loan -- no doubt without interest, but after all loan is a loan.

#### Rehabilitation in the Form of Community

18.43 Keeping in view the situation of the tribal people, the Award made a special provision that in the case of tribals care should be taken that their community does not break during displacement and arrangements should be made for their resettlement elsewhere only in the form of a community. With a view to experiment with the establishment of such model habitations, the Govt. of Gujarat selected two places -- Gutal for the oustees from Madhya Pradesh and Parvetha for the oustees of Maharashtra. So far as Gutal is concerned the Madhya Pradesh oustees have not come there even till now notwithstanding a lot of efforts. The situation of Parvetha is also not particularly good, about which we will discuss later. But the rehabilitation of the people as a community has not been possible even at this early stage of the project when the State Government is so much conscious about the problems of the oustees. For example, it is learnt that 82 families from Navagam where the dam is being constructed have been assigned lands at 9 different places. In a number of cases the people want and settled at a place in the hope that their other friends will join them later. But they got only disappointment. Other people have to go to other places in smaller groups because of non-availability of sufficient land in those places.

18.44 There is another facet of this problem as well -- the possibility of persons remaining behind in a village coming under submergence, remaining viable as a community. In a number of villages, there are many people whose houses or lands have not come under submergence. Therefore according

to rules, they are not considered as affected persons. These people are in a great dilemma. When the entire village has moved out how two or four households in a far off hilly and forest region should continue? In many cases, the remaining people were forced to move out even without the promise of any compensation or rehabilitation facilities. For example, 16 families have been left behind in the village Panchmuli and six in Jer. The issue is not that of numbers but of principles. I had also raised this question at my level but even after getting full assurance for about three years a satisfactory solution of this social problem is still illusive.

18.45 In this way, it is clear that decisions on number of points are still to be taken notwithstanding declaration of policies about rehabilitation. In many cases, even after rights decisions have been taken, their implementation is partial. It appears that in practice, the emphasis is more on completing the formality than on resolving the problems of the people and ensuring their welfare. Even ordinary people pass through a state of great psychological tension when they face a crisis such as displacement. In this situation, even a small change here and there in not keeping the promise made may lead to the collapse of confidence and the person is overwhelmed by the worries of future. It is impossible for him to live alone or in very small groups in an unknown new regime. And he gets impatient return and regain the warmth of his known habitat, turning away his face with a shudder from all programmes, projects, and promises. And then he starts moving in the direction the world to which he belongs without caring to look back.

#### Comparison of the Levels of Living - How Much Meaningful?

18.46 Whatever may be the programme or facilities under the policy of rehabilitation but in the end the touch stone of success or failure of all of them can only be the condition of the people after displacement. The World Bank and the Central Government as well as the State Governments accept in principle that the condition of the displaced persons after rehabilitation should be better than earlier. The responsibility of keeping a watch on their condition and to ensure that their condition is better, has been placed on some expert bodies.

18.47 But a very basic question arises here that how to compare the condition of a person before and after displacement? The learned economists are familiar with the modern system and all the norms and tests for their analysis and studies have also been prepared accordingly. In these studies, all aspects of life are assessed mostly in terms of money. But as we have

seen earlier that no form of accounting is suitable for comparing the value of a thatched hut near a mango grove in an open field and that of a hovel constructed of brick and mortar on the side of a nullah away from the village. Most of the items relating to the life of the tribal are outside the market system. They cannot be assessed in terms of money. Therefore, their situation before and after displacement is uncomparable.

18.48 When the tribal people move out of their area and settle elsewhere, the biggest difference which they feel is about their alienation from natural resources. This difference is beyond the understanding of our system. We have seen earlier that the economy of the tribal comprises three levels (Page.....). The land accounts for only 1/3rd or 1/4th of his livelihood. But the new system takes it to represent the whole and gives its decision about the situation of the tribal on the basis of that partial account. The experience so far has been that the first effect of relocation is that the tribal cannot get those articles for his food which he was getting earlier from the forest. It has an extremely bad effect on his health. Secondly, the cattle, which are his only capital, also gradually perish. In the new settlements in many cases he is left with no cattle whatsoever. Gradually he becomes entirely dependent on agriculture and labour. This system is so precarious, particularly in the beginning, that he is not able to bear its risk. Therefore, he has to dig into his capital even for meeting the ordinary requirements and gradually the entire compensation money is frittered away. And he is then forced to roam about without any support. These facts often remain unseen in the studies of economists.

#### The Condition of Parvetha

18.49 The Government have nominated certain institutions for studying the tribal situation notwithstanding these basic limitations. Only time will tell how reliable can be the economic statistics presented by them and what use they can be put to. But the facts about condition of the oustees from Maharashtra who were settled in a village Parvetha, brought out in a study by the Tata Institute of Social Sciences, Bombay are shocking. It points towards the present unsatisfactory situation of the people there. Besides other things this study reveals that the death rate of children amongst these people has risen sharply after their relocation. In this situation it may be difficult for these people to maintain their population at the present level. The final criteria about the welfare of a community after taking into account all the good and bad points can only be its strength to survive as a community. If even this is not possible for a community, then whatever may be the nature of other benefits of a programme, it has no meaning.

18.50 There is great dissatisfaction in this village which was sought to be set up as a model habitation. Assignment of land has been partial, some people have remained behind. Even now it is not certain whether they will get land or not. Those who have come they do not know when they are likely to get the pattas of their lands. There is no place for grazing of their cattle, about half of their cattle wealth has already perished. In this situation, a feeling comes to the mind of these people that "alas, they should not have moved out of their village".

#### Open Studies Inevitable

18.51 This situation after rehabilitation is no doubt regrettable. But what is more regrettable and shocking is the governmental reaction about this study by Tata Institution. Instead of trying to get to the root-cause of this grave situation, the government got entangled in the formality of these studies. The biggest question before them was not that of the condition of the people, but the fact how the description of their situation had appeared in the press. It was this which claimed their immediate and serious attention.

18.52 Unfortunately whenever such an unpleasant thing is brought out about the condition of the poor, the reaction everywhere is the same. Ordinarily all efforts are made to ensure that the results of social studies are made to order. It is a matter of regret that many institutions are prepared to work according to the wishes of their employer. In this case, when the State Government raised an objection that how the results went out to the press, the Tata Institute raised a basic question in its reply. Whether the people who are being studied have a right to know about the results of those studies? The Government reaction on this was entirely incongruous. According to them the tribal people are illiterate, they will not be able to understand them, therefore, where is the need of telling them about those reports? How unbecoming is the proposition that if the tribal were not uneducated only then they would have the right to know what was being done to them. Since they are uneducated let the things happen, they need not even know what is happening to them.

18.53 The question again is that of the perception. In a situation when the tribal people are still innocent, uneducated, is it not the duty of the government not only to give the results of the study as they are, but also to make arrangements to ensure that they understand howsoever bitter the results may be and that they are not handicapped because of their being uneducated? When I raised my objection in this matter, the State Government invited my attention to the agreement with the Tata Insti-

tute that the condition of secrecy have been violated. The issue again comes back to the original point. The government was not so much concerned about the delicacy of the situation, they were not bothered about the problems of the people, they were also not worried about what would be proper in principle and what was the responsibility of the government towards people. They did not even remember their Constitutional responsibility, their greatest anxiety was about that paper contract. It has to be ensured that where the question concerns the life of the people, no one will be allowed to play with their interest under the cover of secrecy and formalities and whatever facts become available or are discovered shall be known to everyone as they are.

18.54 The government was all set for discontinuing the contract with the Tata Institute notwithstanding the objections raised by me. But it is learnt that the World Bank also came to know about this dispute and accordingly the contract has not been terminated. The State Government did not think of giving any further information to me in this regard. The relevant question for the government perhaps was who had how much weight? Whether a Constitutional authority concerned with the rights of one-fourth of citizens of the country or a commercial institution which gives credit of two paise? The World Bank may be on the scene today, it may not be there tomorrow. As an outside institution it has its own limitations, it has its own compulsions. It can give one opinion today but that opinion can also be changed tomorrow. But the Constitutional frame is ours, designed in the interest of our own internal balance and consistency. The real question here is not about the prestige of institutions, it is that of national values.

#### The Question about Availability of Land for Rehabilitation

18.55 In view of the policies of rehabilitation and the action taken thereon so far, in the end it is necessary to be clear about two big issues --(i) Whether the land required for resettlement of all oustees will be available to the desired extent? (ii) Whether it will be possible to resettle the tribal people at new places as communities?

18.56 After accepting the principle of land for land, all the State Governments started their search for available land. Initially this action was taken up naturally in a routine fashion as happens usually in all government schemes. As I have said earlier that even now this has not been decided finally as to how much land will be needed for rehabilitation in the three states. The reason is simple. Neither the policy on this issue has been finally settled so far, nor have the figure about the number of oustees

has been fixed as yet. Therefore all types of activities concerning land so far have been based on probabilities and guess work.

18.57 The basic premises and the methodology adopted in this regard have been quite different in different States. Most of the oustees from Maharashtra were not willing to go to Gujarat from the very beginning. Therefore the Government of Maharashtra has been proposing to make suitable arrangements for their rehabilitation within the State. But the estimate of the State Government itself about the figures of oustees has been varying from 1358 to 2035 oustees with corresponding figure of about 2500 to 3500 hac. as the extent of land required for them. No one knows how reliable these figures are. Maharashtra, from the very beginning, was depending on the availability of forest land. That was also the demand of the tribal people. The agreement with the World Bank which was executed after the enforcement of the Forest Conservation Act 1980 also stipulated that if necessary the government will excise land for rehabilitation from the reserved forest.

18.58 Since the responsibility of the Government of Gujarat was to make arrangements for the land for displaced people from other States, it was not possible to have an idea as to how much land in the end will be required by them. Their estimated figures about the oustees from their own State has also varied from the lowest figure of 1992 to the highest figure of 3300. But even then inspite of all this, in the beginning the State Government was depending entirely on meeting in full the possible requirement of land from government land itself. The figures were also accordingly presented to the Tribunal on that premise. According to the initial estimates, about 40,000 acres of government land could be identified for rehabilitation. Therefore lists were prepared of all the available land through out the State. Next to this at number two was the ceiling surplus land which, according to government estimates, could yield about another 40,000 acres. Therefore, the decision was taken not to distribute this land amongst the landless people but to reserve it for rehabilitation. It was also envisaged that 12,000 acres of fallow land will be developed and distributed to the people. If even after this, some further land was required that could be purchased from private individuals.

18.59 The Government of Madhya Pradesh did not consider it necessary to prepare a detail in this matter. But their thinking from the very beginning was that rehabilitation was not their responsibility. They will send their people to Gujarat. Secondly, as far as possible the land for

rehabilitation will be found from forest area, government fallow land and ceiling surplus land. Moreover, according to the law of Madhya Pradesh, land could be taken from the benefit zone of irrigated projects for rehabilitation. And it was not necessary that the oustees must be given land in the benefitted zone of the same project. Therefore, it was thought that lands from other projects could be taken out for distribution amongst the oustees of Sardar Sarovar. If after all this, some further land is required, private land could be purchased for that purpose. But in Madhya Pradesh all this remained at the level of policies and principles because they have not been able to know and there are no estimates either that how much land will be required by the government for rehabilitation, how many people will go to Gujarat and how many people will make their own arrangements.

18.60 After completing this paper account of the land, which could possibly be available in Gujarat and Maharashtra, the next question was to see the land on the spot and to show it to those people who were sought to be resettled there. When the processes of verification of land on the spot started, it was found that most of the lands shown on paper in Gujarat was either under the forest, or was occupied by other people, or was not fit for agriculture. The ceiling surplus land also could not help much. Firstly, such land could be available only in small patches. Secondly, the first right over these lands was of those landless people who were either cultivating them or were living in the same village. Recently, the Central Government have also directed that the proposal to set apart the ceiling surplus lands for oustees was wrong. In this way, the first plan of government land being available for rehabilitation in Gujarat became a non-starter.

18.61 On the other side, the Central Government did not accept the request of the Government of Maharashtra to allow rehabilitation on forest land. But in the mean time, some other people have occupied whatever good lands fit for cultivation were available in the forest area designated for the purpose. Moreover, a question has also been posed about the dependence on those forest of the people living in the neighbourhood. The Government of Maharashtra has been pressing on the Central Government for the release of forest land in spite of these facts. The Central Government is not prepared to give forest land for rehabilitation on principle. On the face of it, the forest land required by Maharashtra is not much. But if once the government makes an exception, then how will it refuse others. In

this way, the issue is very complicated. The real position at the moment is that the proposal of settling the oustees of Maharashtra on forest land in a way is completely knocked out.

18.62 In the case of Madhya Pradesh, no appreciable activity has even been started in regard to the issue of land for rehabilitation. But the situation is likely to be the same as in Gujarat and Maharashtra. Wherever Government land is identified as fit for agriculture, it must be under the occupation of someone or the other. The same is the situation about ceiling surplus land. In some places, like Hoshangabad, these lands are already under the occupation of displaced persons from Tawa and Proof Range. The problem of displacement even otherwise in Madhya Pradesh is demonic indeed. Everywhere, on all sides, the project-affected people are roaming about. Wherever they are getting any land they are occupying the same without bothering about the law. In such a situation, government and forest lands cannot be relied upon. Presently the government is trying hard that the responsibility of rehabilitation as far as possible should be passed on to the Government of Gujarat. If the people do not go to Gujarat or land is not available in Gujarat, then they feel that it may be possible to rehabilitate them on private lands which could be purchased for this purpose.

#### Acquisition of Private Land for Rehabilitation

18.63 If government land is not available for rehabilitation of displaced persons, then the next question is whether land can be acquired for rehabilitation of displaced persons in the same way as for the project. If construction of a dam is a public purpose, should the rehabilitation of those uprooted by the dam not be deemed automatically as a public purpose? There are legal provisions in Maharashtra and Madhya Pradesh for acquisition of lands in the benefitted zone for the rehabilitation of affected people. But the scope of this legal provision in practice has been rather limited. The land can be acquired from persons in the benefitted zone according to a prescribed scale. The land which a person may give for this purpose will depend on his will. Thus, it is expected that the arrangements for rehabilitation of affected people can be made within the project area itself.

18.64 - But if we consider this law in some depth, it will be clear that it can be helpful in solving problems of affected people only in small pockets. The situation of the people in the benefitted zone and the affected people in small projects is generally about the same. Therefore, if the

people who loose land, get a part of the land in the benefitted zone in the same area, it can become the basis for starting their life over again with confidence. It appears that the situation of big projects was not kept in view while preparing this legal frame. In these projects, villages after villages from remote areas are forced to move on to new unknown locations. If these people have to reestablish themselves in the form of a community, it is necessary that there are sufficient lands in big patches. This is possible only when the entire land of the benefitted zone is redistributed and large blocks are set aside for the displaced people. An entirely new law is needed for this purpose.

18.65 But as we were discussing in the limited context of the three States, land can be acquired for rehabilitation even under the common law. An idea in this regard was floated in Maharashtra that the rehabilitation of displaced persons of Sardar Sarovar should be done within the district of Dhule, to which all the displaced belong, by acquiring the land from big land owners. As soon as this proposal was known, the big farmers, who are more articulate and politically more influential, opposed it and brought out a morcha against it. The government coolly turned its face against his proposal the moment it saw the opposition and thereafter immediately resumed its earlier activities as if nothing ever had happened on land acquisition front. It is clear that government is not prepared to displace other people for rehabilitation.

18.66 In Madhya Pradesh even after the law has been enacted, not much progress has been made in the distribution of land in the benefitted zone of projects. It is understood that in the context of Narmada projects, a ban has been imposed on the transfer of lands in the benefitted zones of all irrigation projects so that in the case of need lands can be purchased from the people there. But it is also notable that the law which empowers the government to acquire land in the benefitted zone has not been extended even to all the continuing projects. In this situation any idea about acquiring lands outside the benefitted zone and settling the displaced there cannot be even thought of. Even in Gujarat there is no such proposal and there is no talk about this possibility.

#### Purchase of Private Land for Rehabilitation

18.67 In the above context, it appears that if rehabilitation is to be done following the principle of land for land, there is no firm alternative before the government at the moment. In the end they will have to think of private lands. Therefore it will be necessary to consider the socio-economic consequences of such a policy and the real potential of the same

in some detail. The policy of resettling displaced persons on privately purchased land has gained some momentum in the last two years. According to the Gujarat scheme, in case government is not able to provide land for rehabilitation to the displaced people the people can search for the land on their own and if they like the land they can also purchase it themselves. The Government will pay the difference between the price of the purchased land and the compensation received by the individual if the price is higher. The government is helping the people in this entire programme.

18.68 The Government of Gujarat has set up committees for helping the people. According to the government procedure, as soon as it is known that some people are prepared to sell their land, a committee inspects the land. If the land is found to be suitable and there is reasonable possibility of purchasing it, the land is shown to those people who are prepared to go and settle in that area. Once the people give their general consent, the committee negotiates the rate. After the rate is fixed, there is an agreement for purchase. In the end, the formalities of sale are completed between the owner and the displaced person and the papers are finally made in the name of the displaced person. About 3000 acres of private land has been purchased so far under this scheme and about 300 people have moved to new places for settlement.

18.69 Madhya Pradesh is still considering the policy and the procedure which may be adopted in case of purchase of private land. A final decision has not been taken. In Maharashtra, if some of the displaced persons desire to settle within Maharashtra, how and from where land will be made available is not clear. According to the Government of Gujarat, all those people who would like to come to Gujarat will be provided private lands and settled there.

18.70 If the scheme of settling people on privately purchased lands is seen from the side of Gujarat, the position is very clear. Whosoever wants to come and settle in Gujarat will be enabled to purchase the land somewhere or the other. Land is available, people are prepared to sell their lands and the government is ready to help the settlers fully. This gives an impression as if the problem of rehabilitation has been finally settled. I had talked to the Chairman of Sardar Sarovar Development Authority in November 89. He had no doubts about the scheme of rehabilitation based on private lands. He was fully reassured about his plans.

Justifiability of the Basic Change in the Responsibility for Rehabilitation

18.71 But if we see this scheme from the side of the affected people, particularly the tribal people, there are many points on which no solution appears to be in sight. Let us take first the issue of purchase of private land. Even this proposition is plagued with numerous questions. The most basic question in this regard is that who is responsible to ensure that the land for rehabilitation is available and the people are finally well-settled there. In principle, this responsibility rests with the government. But in the scheme of purchase of private land, this responsibility has been shifted to the people without clearly mentioning it, the government will only help them.

18.72 This is a basic difference in the scheme of rehabilitation. A clear exposition of all its aspects, therefore, is necessary. Most of the displaced people are poor and innocent, many of whom did not even have the opportunity of going far away from their villages. The sellers of the land will be mostly big and wealthy people. In this situation, can it be hoped that these poor people will be able to negotiate the purchase of the land? It is clear that they will have to seek help from others. At the moment, the government has set up committees and they are prepared to help them. But whatever Government has sought help of anyone including Government institutions he has been deceived. He does not know that he will get. The committees will help him in purchase of land. But in the end the responsibility will be that of the purchaser. Once a paper has been signed the responsibility of the State ends.

18.73 Now the second question is about the purchase of land. In such an open purchase of land, it is natural that there may be many purchasers for the same land and the seller may raise his price phenomenally. He may give some terms to one, but then later on may oblige some other. In such a race, it is only the cleverer people who will be in the forefront and the simple people will remain behind. Nobody can say whether they will have some place somewhere in the end. Then, the responsibility of the purchase of land is that of the purchaser. If later on, there is any dispute about this land then the purchaser will have to face it on his own. Even in the beginning of the new scheme of private purchase, a number of problems of this nature have arisen. The land purchased in Sukha village had some old dues, because of which the names of purchasers cannot be recorded. At a few places, people are not prepared to go even after they have given their consent for the land. There is a difference of opinion even amongst state governments on this issue. The Government of Madhya

Pradesh has demanded that the Government of Gujarat or some state authority may first purchase the land and only then it should be formally handed over to the persons after getting their consent. But the Government of Gujarat is not prepared to take this risk. If the Government purchases the land and then no one is prepared to accept it, then what will happen to that land? If the government for itself is so cautious, how can it think of persuading the innocent tribal community to plunge in the unknown world?

#### Unstated Premises of Private Purchase

18.74 Even if we overlook these problems, there are three unstated premises of the scheme of rehabilitation of private purchase. Firstly, adequate land both in terms of quality and quantity will be available in Gujarat. Secondly, all the displaced persons will be willing to go and settle in Gujarat. Thirdly, the tribal people in the new setting will be able to establish as a community and will lead a better life as compared to the earlier. It will not be proper to accept all the premises without examining them in detail.

#### Are the People Prepared to go to Gujarat?

18.75 Let us begin with second premise that all the displaced people will be prepared to go to Gujarat. It is possible that some of them may not be ready for this at the moment, then what are the reasons and whether it will be possible to remove all those causes?

18.76 Broadly the displaced persons from Sardar Sarovar comprise about 70% tribals, about 10% SCs and the remaining of other castes. The situation of all the people within the Scheduled Tribes is not the same. Some tribal people particularly those from Gujarat and in the neighbouring areas are more enlightened. They are familiar with the outside world even though it may be limited. Their relations are also in Gujarat. But most of the tribal people of Narmada Valley do not have much relationship with the outside world. The socio-economic situation of many villages on the bank of Narmada is quite good. They are able to get so much within the Narmada Valley that there is no need for them to go out. It is true that the quality of land in all the areas belonging to the tribal people is not the same. The land in hilly areas is unproductive. Therefore, the people from Alirajpur in Madhya Pradesh are required to go out of the area for sometime every year for earning their living. But as we reach the bank of Narmada, the quality of land improves.

18.77 The upper portion of the area of submergence of Sardar Sarovar is a part of Nimar. The valley in this area is very broad and their lands are unequalled. The people from this area say that land like their's cannot be seen in the whole world. Even if we discount the element of ethnocentrism while describing one's own lands, it is a fact that everything grows in these lands and grows in plenty. In the area of Nimar, there are some tribal people as well. Most of the tribal people are cultivators, but some of them are landless labourers. The number of Scheduled Castes amongst the landless is very high.

#### Psychology of the Tribal People

18.78 The tribal people ordinarily do not want to move out and settle outside their area. There are many reasons for this. Firstly, there is a fear of unknown place and unknown people. In this regard, their earlier experiences have not been happy ones. For example, in the nearby Gujarat itself the government assigned lands for setting up habitations and agriculture to many of the displaced people from Ukai, but at a distance from their original place. But these people could hold on in those places only for a year or two. The people in the neighbouring villages occupied their lands and finally they had to move out.

18.79 The tribal people have a feeling of full security only amongst their own people in the forest. And then all requirements of their life are available in the forest - roots and shoots for eating, fodder for their cattle, firewood for running the household, bamboos and poles for constructing huts and fences and other produce of the forest for meeting their cash requirements. None of these will they get anywhere else.

18.80 The tribal people do not live on land alone. Forest and land have a co-equal important place in their lives. They are not able to understand how they will live in those places where there are no forests. Another important reason for the unwillingness of the tribal people to move out is that they are used to living in the open. In new habitations, they are assigned small plots. The first question which comes before them is about keeping their cattle.

18.81 Even if the people get land for land, will it be possible for them to adjust all of a sudden, with the new setting? This is not an easy thing. The first thing which will happen is that being cut away from forests and water, they will be left with only one support, that is, of agriculture from which it will be impossible for them to meet all their requirements.

In this way, a new phase of deficit in their economy will start and they will have to take loan from others for meeting their needs. Once there is a debt, it is not possible to get out of it. In the end, their lands get sold, they become resourceless.

18.82 The tribal people very well understand this chain of events. Therefore, they do not want to take the risk of moving out of their homes. It is true that the ordinary tribal is not able to tell anything many a time, but he understands everything. There is only one idea which whirls continuously in his mind that he will not leave his home. If he leaves his ancestral land, who knows what will happen to his children elsewhere. If he gets into some trouble while in a unknown place who will come to his help? Even if he wants to run away from there, he will not be able to escape and even if he escapes where will he go? When a tribal hears about displacement, these are the problems which make him uneasy and his natural reaction is, 'I will not go anywhere, bomb the area if you so wish, we will perish here.'

#### Attitude of Big Farmers

18.83- The other big class of displaced persons comprises those non-tribal farmers who have very good lands. While these people are ready to go to Gujarat. It will not be difficult to make a guess about their reaction on the basis of past experience. Firstly, the lands which have been purchased so far in Gujarat are comparatively better than the lands of the tribal people. Therefore, they have accepted them. Secondly, the area to which the first group of tribal people has gone was not so unknown to them. But as we move up the Narmada Valley, the distance from Gujarat also increases and for the people of those areas Gujarat becomes an unknown territory. Moreover, for the people of Nimar no other lands can stand in comparison with their's. Therefore, the non-tribal farmer is also not prepared to leave his place and go elsewhere.

18.84 In this way, it is clear that even if the Government of Gujarat is ready for making arrangements for rehabilitation of all displaced people. The people from Maharashtra and Madhya Pradesh, atleast as the things stand today, are not prepared to go there. At this time indirect pressure is being exerted on them through promises of greater facilities in Gujarat and making clear the prospect of lesser facilities if they decide to settle within their own states. This decision is against the rehabilitation policy under the Award, according to which the displaced people will be free to make a choice about the state in which they will like to settle.

### Is land Available in Gujarat?

18.85 Even if it is accepted for a while that all the displaced are prepared to go to Gujarat can it be said that sufficient land for this purpose will be available in Gujarat? There are three aspects about availability of land for resettlement. Firstly, the land should be good and acceptable to the people. Secondly, land should be in a big block so that the tribal people can be settled as small communities. Thirdly, there will be enough land to accommodate all the displaced people.

18.86 Let us take the question of people's choice about land. In the beginning, the Government of Gujarat showed government lands to the people. Bulk of the land was not liked by the people, which gave the scheme a very bad publicity everywhere. In the scheme of purchase of private lands, land can be purchased only when the people agree. At the moment the purchase of private land has just started. Therefore, comparatively better lands are available. But very high prices have to be paid for those lands. Moreover, many people are not just able to get good lands. At some places, people initially accepted the lands, but later refused to go there. It appears that their acceptance in the beginning was in a state of no choice. As more and more land is purchased, the quality of land available for purchase will go on down and the price will go on rising.

18.87 It is true that the Government of Gujarat is prepared to spend whatever amount is necessary for rehabilitation. But by merely making provision of money, it is not necessary that sufficient land can be purchased. There are a number of problems which are likely to arise. The purchase of private lands for rehabilitation has had a very big impact on the prices of land. The lands which were available a year back for about Rs.4000 to 5000 per acre are now being quoted at about Rs.14,000 to 15,000 per acre. Some people do not hesitate even in asking 25,000 rupees per acre and a figure of 40,000 to 50,000 may not be something impossible. As the need for extensive lands being purchased becomes known gradually, the rise of price is bound to occur. But at the moment even this is not known as to how much land will be required to be purchased because of the simple fact that both the number of project affected people and their entitlement for land are uncertain. Will the Government of Gujarat be able to purchase any amount of land at any price? It is possible to give a promise but what happens in reality, only time show.

### The Possibility of Reestablishment of Communities

18.88 The other question about land is whether land can be available in big blocks, particularly where habitations are being set up for the tribal peoples, so that they can reestablish their community life. The areas where private lands are being purchased at the moment are not very far away from the area of submergence. The pressure of population is not also high and there are many people there who have large land holdings. Therefore, it is possible, to some extent, to settle a group of families in blocks measuring about a hundred or two hundred hect. Even then every village has got scattered with 7 to 8 locations which is against the expressed wish of the displaced people. Moreover, some of these areas have also some forest and pastures, which give atleast some relief to the tribal people.

18.89 But the question is that even if such settlements are possible at a few places will it be possible to arrange similar rehabilitation on large scale on similar lines? The government has not prepared any comprehensive plan about it so far. But still some things are clear. As we proceed beyond the area where lands have been purchased recently, the area is more advanced and there is greater pressure of population. Therefore, it will be difficult to get compact blocks in those areas. Even if private lands are available, they will be in small bits. That is not all. The economy of these areas will be more and more dependent on agriculture; forest and pastures will have a much lesser role there. In the most advanced areas, they will be non-existent. Thus, it appears that in those areas it will neither be possible to set up separate habitations for the tribal people nor will they get resources consistent with their own economy. In this situation, after agricultural land is made available to the tribal people they will have to live in ones and twos in big villages. In any case, there are no facts before us at the moment on the basis of which it can be said that sufficient land will be available for rehabilitation in Gujarat and that the land will also be available in such big blocks that it will be possible for the tribal people to reestablish as communities in accordance with their wish.

### Purchase of Private Lands--Unstated Second Displacement of the Poor

18.90 Some aspects of purchase of private land for rehabilitation have come to the fore which are crucial for social equity. If personal lands are purchased on such a large scale, those aspects cannot be ignored. When I visited first Suka village, I found that the people had been settled

on 500 acres of land which was purchased from a single person. The first two questions which naturally came up at that time were "where from this person got so much land?" and "if that land was under cultivation what happened to those who were cultivating that land?" The answer to these questions are also quite simple. The land owner must have taken away that land from the local people. The people who were cultivating the land till then had no rights over it. Those people after the land was sold must have moved out in all directions for making a living elsewhere. When the matter was discussed with other knowledgable people and also in other villages the position became quite clear which is given below in a summary form.

18.91 Let us first discuss who are those persons who are selling personal lands and why they are selling it? Broadly, there are two types of sellers of land, first money lenders and second, big farmers. The big farmers themselves comprise two categories - (i) those people who live outside the village and (ii) those who live in the village and get their lands cultivated under their supervision. The people who are selling the land are mostly those people who do not cultivate the lands with their own hands. Some of these people give their lands on share-cropping basis, or some of them may be doing the cultivation through hired labour and some of them give their land on contract. In this way, most of the sellers of land are non-cultivating big farmers, traders and absentee landlords.

18.92 The reason for these people selling the lands are many. Firstly, the interest in rural property is becoming less amongst those who are living outside the villages in Gujarat. A very important reason for this is the stringent law about purchase of agricultural lands by outsiders. Any such person, who lives beyond 15 Kms. of a particular place, cannot purchase land in that village. Therefore, in the remote areas firstly the number of persons wanting to purchase land is quite small. Secondly, the people of the village do not have so much money so that they can pay high prices. With the government scheme of purchase of land for rehabilitation, a new milieu has been created in this area. Those who want to sell the land get a purchaser without even stirring out of their homes, and what is more important, even the legal permission is not necessary in this case. They can also demand their price. There is one more unfortunate reason for the sale of land at this time. There were successive three droughts in Gujarat because of which firstly the crops failed, secondly many cattle died away and thirdly, which is most important, many farmers could not repay their old loans and got new loans. In this way there liabi-

lities have become very heavy, from which it is very difficult to get out. Some people are prepared to sell their land only with a view to get out of the debt some how or the other.

18.93 Many of these lands belong to money lenders. All money lenders get their cultivation done through agricultural labourers. These people have no interest in personal cultivation. There is a growing problem about availability of labourers. The wages have also risen sharply. And one never knows what type of law may come in future? Therefore, the government purchase yields them good money and also relieves them of the liabilities of the labourers. In present situation the money lenders of this area could not have got a better deal as also opportunity.

18.94 The number of landless labourers is very large in those areas where land for rehabilitation is being currently purchased. These landless labourers are mostly tribal, some of them are members of the Scheduled Castes as well. Most of the big farmers in these areas and the money lenders have migrated to that area about 100 to 150 years back. The original inhabitants of this area were the tribal people. It is clear from this that these lands must have belonged to the tribal people earlier. It is the tribal people who became landless labourers after their lands got alienated. Eventhough, they lost the ownership of land yet they continued to cultivate the same -- in the capacity of a wage-labourer or as a share cropper.

18.95 The purchase of land for rehabilitation has created a new situation. Most of the displaced people are farmers. These people, after they purchase the land, will cultivate the land themselves. In this situation, the question is 'what will happen to those members of the Scheduled Castes and Scheduled Tribes who are cultivating these lands today? Where will they go? No one has paid any attention to this problem so far; nor is there any thinking about it. The position of these people is exactly like those landless labourers who become resourceless after land is acquired from a zamindar. They are not heard simply because their rights are nowhere recorded. Eventhough the incongruous and unjust situation of the landless people in the affected area has not been fully corrected, yet some realisation of their problems, has got reflected for the first time in the rehabilitation policy of Sardar Sarovar. They have also been included in the category of displaced people and have been accepted as eligible for rehabilitation. But can the case of those landless people who are affected because of rehabilitation programmes be forgotten simply because

they do not find a place in the government records? This problem will continually increase as the programme of rehabilitation picks up. I have already referred to the case of Suka. In other places also, the entire habitations of landless people are getting deserted. Because they have no other support, they are being forced to run towards the town -- they have no other choice except to take shelter in the urban slums--the final stage of the process of deprivation.

18.96 It is clear that these landless labourers are victims of a double blow of the inequitous system. Therefore, we will have to see the problem from their perspective. Can their rights be ignored only because on the other side is the displaced person standing with the Zamindar and the government is supporting him? Do the tillers of these lands not have this much of right that they continue indefinitely to cultivate those lands.

18.97 In this case whatever arguments may be put forward, in whatever form the delicacy of the situation may be presented, whatever may be the law but the precept of the human rights and also our Constitution supports the right of the tiller. So far as the tribal people are concerned, it is expected of the state in the Constitution that it will not only protect their constitutional rights but also their human rights. The government cannot take away the right of one person for giving justice to another person. But a solution of this problem will be possible only if, in the first instance, it is accepted to exist.

18.98 The story of the poor in the whole unorganised sector is the same. There is a clash of interests and also of rights even amongst these people themselves for no big gains but just for the sake of bare physical survival. This is a very unfortunate example of the clash of interests amongst the poor. But when such large projects and high principles are being discussed is it not possible that there is justice for both in the new system? The truth is that both of them are victims of the system. Therefore, the question boils down to the honesty, integrity and equitableness of the whole system itself.

#### The Possibility of Rehabilitation -- An Overview

18.99 Now if we see the problem of displaced persons of Sardar Sarovar in its totality, then some aspects of their rehabilitation become quite clear. Even after so many years of protected discussions about displacement

and rehabilitation even correct figures of those likely to be displaced by this project are not available. In some cases, even the decision at policy level about whether a person should be treated as displaced or not remains to be taken. Moreover, there are number of issues about the compensation of land, trees, etc., about which people are still in the dark and no government can state with confidence that whatever has happened so far in relation to the compensation was right and in future correct decisions will be taken without fail.

18.100 There is a lot of talk about a comprehensive policy about rehabilitation. But all the governments together have not as yet been able to formulate a common policy. The most regrettable thing is that these governments have knowingly continued to adhere to separate policies. There is a lot of confusion amongst the people because of this. Secondly, the first principle about rehabilitation is being ignored according to which the people can chose the state for their rehabilitation. This is notwithstanding the fact this principle has been accepted as a right of the people.

18.101 Some work on rehabilitation has already been started in Gujarat. But the number of displaced persons in that state is not more than one in ten. In Maharashtra and Madhya Pradesh, which account for about 90% of the affected people, in the field there is no clear picture about rehabilitation. Much of the discussion is still continuing at the policy levels and many important decisions are still to be taken. Some people from Maharashtra have gone to Gujarat but their experience so far about their life in the new settlements has not been a happy one.

18.102 The biggest question about the scheme of rehabilitation is this that whether land will be available on such a large scale where people can go and live in peace. There is no clear picture even about this point so far, nor a complete plan has been prepared for this. So far the entire issue rests on hope. The main basis of this hope is the private purchase of land in Gujarat started recently and the willingness of a few people to go and settle there. This is based on the belief that suitable arrangements will be made if necessary in Gujarat for all the displaced people on similar lines. This premise, at best, can be said to be a "good hope". But it will be necessary to think in some depth to know whether this is right and also practicable.

18.103 Firstly, on the basis of a small scale programme, which has been executed in Gujarat so far, it cannot be said with confidence that land

will become actually available on such a large scale as may be needed for that purpose. Secondly, so far only those displaced persons have opted for moving to the new habitations who are comparatively advanced in socio-economic terms. Moreover, the places where they are being settled are not very far away from their original homes and some of them are their known areas. The main problems in this schema of rehabilitation will arise only when the turn of the people from the most backward areas comes and when they will have to go and live amongst complete strangers far away from their homes. Nothing can be said right now about what will happen to those people at that time. Similarly, better lands are available now, since it is just the beginning. It is also possible to make some choice. These lands are better compared to the land of people who have come in the first phase. But it cannot be said that similar lands will be available in future also and will be acceptable to the people, particularly the people who have better lands.

18.104 It would be understandable if there is no comprehensive plan of rehabilitation and there may not be satisfactory solutions to all the problems. But what is inexcusable that these questions are not even been discussed with seriousness. Therefore, just on the basis of the small beginnings made in Gujarat and the promises made by the government so far everyone is hoping that a satisfactory solution will be possible for all the displaced people. Nobody is prepared to move beyond the fond state of hope and trust and present the tasks in concrete terms. In this situation, most of the people of the valley have basically come to this conclusion that lands are, somehow or the other being arranged for a few people without preparing the full plan only with a view to persuade them to stop their opposition of the dam and give their consent. When the dam is completed and water will start getting filled, then at that time people will have no other choice except to run. At that time no one will be around to find out from them their problems. The people are asking whether the promises now being made can be expected to be fulfilled in that situation? Their own answer to this self-query is a clear "No".

18.105 It is at this stage that the issues get stuck up. The common man does not have a very happy experience about government promises. Who knows that after the purpose of government has been fulfilled how many promises will be kept or will the government be in a position to keep the promise? At that time everyone will wash his hands by statements like "what to do, we are helpless, you yourself tell us what to do". Everyone will move away in his vehicle after saying this and the poor tribal will remain

behind, wondering where to go in search of a shelter and a source of living?

18.106 This is not something which is just a matter of imagination. Can the experience of Sardar Sarovar itself be said to be satisfactory notwithstanding the fact that all eyes are fixed on it and an allout effort is made to make it a success? The people say that if the government after making a firm promise takes two to four years even in small matters and is not able to come to a final decision, then how can one depend on them about major issues? Secondly, they are all seeing it very clearly that the government does not appear to be much concerned about their problems. If the formality of the law and the procedure is complete that is enough for the government. Otherwise how is it that the people of Kewaria are still roaming about? Moreover, even in the case of the villages which are being displaced and resettled right now and on whom the government is bestowing its full attention, all the issues have not been resolved. The cases of many people are still pending and they have not got relief notwithstanding all sorts of promises. In a village like Mukri of Gujarat, 75% of the people are not prepared to move even after land have been assigned to them for years simply because there is no drinking water facility at the new site. That is not all. No decision has been taken in some habitations about the price which will be charged from the people for the government land assigned to them. In some villages, people have been settled on lands prepared after clearing the forest, yet there is a talk about realising its cost from them. Somebody says 4000, somebody talks about 8000. Whatever these people had has been finished and many of them now are in debt. Everyone is concerned about what will happen in future. Some of them are waiting for the assignment of pattas. The most serious thing is that many displaced families were not given land earlier because there was no provision. And now when their demands have been accepted and they have got displaced, the lands are not given to them because the government is in a hurry to move out other villages and settle their families. Wrong planning on the part of government is clear in these cases. But according to people this is a part of the plan of the government to keep the people guessing.

18.107 When the situation in some of the affected villages in the beginning even in Gujarat is like this for years on end, what will happen in future? There is yet another experience of the people which cannot be ignored. According to them, whenever there is an issue every officer or political leader tries to make them understand that "he has come just now, he does

not know the entire story, he will consider it". Therefore, how can one be sure that in future the new officers and new leaders will not repeat the same argument-and, in this way, go on giving them promises. According to them, so long as the work is held up the government comes to us, everyone tries to make us understand. But when what they wish is conceded, the people will have to run after the planners. It is on the basis of this experience that they have decided that they will not leave their places. If they move out from there, it will mean sure death for them. Therefore, if one has to get drowned, it is better that one should get drowned in his own place and amongst his own people.

18.108 This is the story about the rehabilitation of affected people of Sardar Sarovar. Eventhough Sardar Sarovar is a separate project, yet it can be said to be complete only after Indira Sagar gets commissioned from which it will get its water. In this way construction of Sardar Sarovar inevitably presumes construction of Indira Sagar as well. The displacement in Indira Sagar will be much more than in Sardar Sarovar. The Indira Sagar project concerns entirely the Government of Madhya Pradesh. Therefore the question before the people is that when Government of Madhya Pradesh has not done any preparation so far about the rehabilitation of people affected by Sardar Sarovar what can be said about Indira Sagar?

#### An abstracts of Questions Raised

The position about the project affected people in Narmada Valley is briefly as follows:

1. Eventhough Sardar Sarovar and Indira Sagar are the part of a joint plan, yet the position about the project affected people of Sardar Sarovar and their rehabilitations is not at all clear.
2. There is no finality even now about who will be considered as a 'project affected person' in Sardar Sarovar. Not only the question of those who have already been displaced because of the activities connected with Sardar Sarovar remains unresolved, but even many other questions like 'who will be considered as project affected because of submergence?' or 'whether the people affected by the associated activities of Sardar Sarovar will be accepted as project affected?' are still disputed matters. Thus, tens of thousands of people are still in a state of great uncertainty.

3. Full agreement has not been reached even at the policy level about the facilities of rehabilitation for displaced people. All the three states have not agreed on the very first point that there should be one policy for all the displaced people.
4. Eventhough 'land for land' has been accepted as a principle for rehabilitation, yet the situation about its practical form is not fully clear as yet. The anomalies, which have arisen because of the changes in this regard, have also not been resolved. Similarly, after the acceptance of a common principle by different States, different policies are being adopted by them without much concern to the interests of the tribal people.
5. There are a large number of discrepancies with regard to the situation as it exists on the ground, the official record and the field surveys conducted by various agencies. They have not been resolved so far either at the level of principle or policy or practice. There are also numerous anomalies in relation to the entitlement of the people for resettlement benefits.
6. The experience of people who have been settled at new sites has not been a very happy one. Most of these people feel as if they have got into a big misfortune.
7. The possibility about government lands including forest land being available for rehabilitation in accordance with the principle of 'land for land' is now almost negligible. Therefore, full reliance is now being placed on purchase of private lands for rehabilitation.
8. The rehabilitation programme based on purchase of private land at individual level signifies a basic policy change about rehabilitation. A corollary of this decision is that the responsibility for rehabilitation will shift from government to the displaced person himself. But so far, the purchase of private land has been taken merely as an issue of implementation of rehabilitation scheme. It has not been presented at any level in the form of a basic policy change.
9. Even in the limited context of the purchase of private lands being treated as a part of implementation of rehabilitation programme, there are differences of opinion even amongst the state governments, not to speak of the people. No clear decision has been taken on this

issue at the highest level.

10. The success in resettling the displaced people in the form of a community at new places has been rather limited, notwithstanding its acceptance as a policy. The difficulties in this regard are likely to increase. However, the possibility is that this principle may be ignored by treating it as impractical even though unexceptionable as a policy.
11. The government has accepted it as a responsibility to ensure that the condition of the people after rehabilitation will be better than before. But even some preliminary things, which are basic, have not been settled so far. For example, no one is clear as to how the socio-economic situation of the tribal people will be assessed. Therefore, only some routine and conventional surveys have been taken up as a part of the socio-economic evaluation without comprehending the basic issues involved.
12. There is not only total absence of participation of people in the entire scheme of rehabilitation but, as we will see later, there is a state of confrontation between the people and the government. Therefore, most of the people are not associated in any process concerning their rehabilitation.

#### Reality behind Government Statistics

18.109 Thus, there is a question mark on almost every point concerning rehabilitation. Moreover, the experience so far has been that even small decisions on every point have been possible only under tremendous external pressure. In other words, no internal process has been instituted in this big programme so that the moment any obstruction is experienced from any quarter there is instantaneous reaction in the system and an appropriate process sets in for its correction so that the whole system can continue to function in a smooth and natural way. In this situation, where programme formulation and implementation are expected on the basis of full coordination amongst three state governments and a number of other institutions, the formalities can continue to be completed, the figures can go on piling, yet the possibility of a satisfactory implementation is rather limited. The experience so far also points in the same direction.

18.110 Now the question is that even when the reality is so unsatisfactory, whenever the human issue is raised even at the highest level, an impression is given as if displacement is no problem. That is not all. If discussion is further continued, a golden picture is presented which gives an impression that not only is everything alright, but whatever is being done is also proper. All state governments, particularly the Government of Gujarat, claim that they are fully prepared for the rehabilitation of the people. The main pillars of this claim and the tentatizing picture presented by them are government orders and some well-kept figures of their activities so far. But in all these presentations, the question marks referred to above are completely ignored. Therefore, it does not become clear that these figures give only a glimpse of what can be termed as formal achievements, the experienced reality of the people hidden underneath these figures is nowhere to be seen. As soon as an affected person is uprooted from his original home and deposited at another place, the living identity of the individual is converted in the form of a figure which is placed in an appropriate caulum of the proforma designed for monitoring the progress. And once this is done, it is deemed to be an achievement. But in this whole process what ordeal the individual is required to undergo and what sufferings he may be undergoing, his experienced reality cannot peep out through the veneer of those figures and tell its tale. And when someone presents unwanted facts, he is not welcome, he is branded as a trouble maker. Otherwise how is it possible that so many anomalies should have persisted for so long.

#### Pre-conditions of a Satisfactory Rehabilitation

There are five important elements in any scheme of satisfactory rehabilitation:

1. There should be a clear policy about rehabilitation in which all points such as 'who is affected', 'what are the entitlements', etc. should be noted in clear terms.
2. Determination of the entitlement of the people according to a mutually accepted and clear policy and the actual situation on the spot.
3. Mobilisation of resources for rehabilitation on the basis of clear rehabilitation policy and precise determination of people's entitlements and then preparation of a rehabilitation plan in a form which the concerned people can really understand.

4. Formulation of rehabilitation programme in the field on the basis of a general consensus which the affected people can see for themselves and give their consent or refusal in unequivocal terms.
5. Implementation of rehabilitation plans in keeping with their spirit after the people's consent has been obtained.

#### Rehabilitation Plans -- How Realistic?

18.111 As is clear from the above discussion that even the first stage action about the rehabilitation of project affected people in Narmada Valley is not complete as yet. But the work of removing the people from their original villages according to the need and settling them elsewhere has started quite sometime back. It is these isolated programmes which are sought to be presented in the form of resettlement plans.

18.112 The future of about three lakhs of people is linked with these projects of Narmada Valley. In this situation, to draw a conclusion on the basis of these isolated small programmes for the potentialities of the full rehabilitation, is neither practical nor justified. To do so is indicative of gross irresponsibility towards this serious problem. It cannot be anything but playing with the future of the people. In my view, equitable rehabilitation, which is being talked about, within the frame of the declared policies is simply not possible. It is possible that a few people, particularly the bigger farmers, may get some facilities, some of them may even attain a better position in life. Whenever it becomes necessary, it is these people who are presented as an example in support of the good will of the administration. But the solution of the problem of the bulk of the people may still remain stuck up somewhere just in the form of a big question mark - unseen, unheard and untold.

#### Rehabilitation is Impossible?

18.113 It is true that today we are atleast in that position where it is possible to discuss basic issues concerning the displaced people of Narmada Projects. So far there was not even a discussion anywhere about the project affected people, their pathetic cries used to aimlessly resound in that river valley, untill it was full and used to get subsumes in the ripples and waves over the sprawling waters as the gift of life. This

change is welcome, but the criteria for the assessment of the situation today can be only the present premises, present thinking, present understanding and the present context. That gross injustice was being done till yesterday cannot be accepted as a valid reason for the present injustice which they are facing.

18.114 To prove that rehabilitation is possible, it will be necessary that a comprehensive and detailed plan should be presented before the people taking into account the wishes and aspirations of the people and keeping fully in view the parameters of justice and practical aspects. And willing consent should be obtained from the people without giving any impression directly or indirectly that they are any obligation to do so. This will be a obligatory precondition for proceeding honestly on the premise that rehabilitation is possible. It is possible that many unexpected situations may arise in the course of implementation because of which it may not be possible to move on in the intended and expected direction. But to talk about compromises on any point other than such unexpected risks will not be fair and just.

18.115 Today when the affected people are surrounded by a series of unresolved questions, at that time the statement that rehabilitation is possible can be good enough for satisfying one's conscience and completing formalities, but cannot be considered as a reality. In this situation to proceed further without taking a final decision about the people's basic right to life will not only be violative of the Constitution but also of the human rights. But it appears that it is precisely this which have been happening today. Moreover, the State is considering all activities in pursuance of its objective to proceed with the project as justifiable. This cannot but be termed as unfortunate. But even this conclusion cannot give a solution to the problem of the common man. The most important point, therefore, arises is that after all how we have reached the present state today? It is this big question which we will be addressing ourselves too in the following discussion.

## PARTNERSHIP IN DEVELOPMENT

### The Practice, The System and The Human Rights

"Rehailitation is not possible but the work of the project is continuing at a fast pace", this statement is an expression of that state of flux in our country where rehabilitation has not been established as a right and it is accepted that the developmental projects must continue as usual. That is not all. The execution of these projects is almost treated as an absolute truth in the eyes of the so-called developmentists. And the affected people should remain content with whatever they may get in that process right; if it is otherwise it is after all their luck.

19.2 But there is a change in this situation. In some cases, particularly in the case of Sardar Sarovar notwithstanding all the deficiencies which we have discussed in detail earlier, rehabilitation has been accepted almost in the form of right. But the process of change has not become so easy as yet, notwithstanding many decisions in principle, that rehabilitation may become a reality even in accordance with the principles already accepted, let alone the higher question of the partnership of the people in the benefits of development. Before I discuss the broad question of human rights along with some practical aspects in relation to Sardar Sarovar, I will like to invite the attention to the situation in some other projects, where initiative has not been taken even at the level of the principles and the situation continues to be very unfortunate.

### No Place Even to Stay

19.3 As is well known that the displaced persons of earlier projects have not been even physically resettled, let alone the question of their economic rehabilitation. Some displaced people of Kadana of Rajasthan are living in the forests of Pratapgarh, but those forests are reserved. Therefore, the forest officials are trying their best to drive them away from the place where they are perching. The same is the situation of displaced persons of Rihand Dam in Sonbhadra. On the other hand, the situation continues to be very unsatisfactory in the case of Tawa, Koelkaro and Swaranrekha. Koraput has witnessed heavy displacement in irrigation projects - both in the area of submergence and also the benefit zones of upper Indiravati. The people have gone hither and thither all around with

### Vainity of Constitutional Intervention

19.4 These are some old projects. But the actual situation even in a number of new projects remains as pitiable as earlier notwithstanding the unending discussions at the national and international level about rehabilitation. This is particularly so even in the cases of Narmada. I have draw the attention of the state government about the problems faced by the people displaced by Hasdeo Bango Project in Bilaspur district of Madhya Pradesh. The displaced persons in this case are all tribals. I had requested the government to make suitable arrangements for their rehabilitation. I had referred to the helpless situation in which these simple people have caught. After all where could these people go outside the forest in the neighbourhood? Moreover, I also draw the attention to the new law of the state under which the land for rehabilitation was accepted to be taken out from the benefitted zone. But unfortunately, this project had been started before the date of the enforcement of the new Act. I was, therefore, told that the displaced people cannot get the benefit of that law because of their non-inclusion in the schedule of that law. What a sense of justice have we in our system in which one can turn the face from the problems of the life of the people by referring to some formal provision in the law? I had urged the State Government that the work on the dam may be stopped until such time that there is no adequate arrangement for rehabilitation of the displaced people. The then Chief Minister also assured me about this, but nothing happened. The work continued as usual. In the end, when the reservoir was getting filled, the people were forced to flee notwithstanding their constitutional rights and take shelter in the nearby forests. But where is the place even there for them?

19.5 Bargi Dam is situated on Narmada itself in Jabalpur district of the same state. I visited this area also before the completion of the

dam to see for myself the condition of the affected people. I found that in view of the special situation of this area, it was possible that a programme of intensive development of a narrow strip around the future water spread area of new dam could be taken up. Thereby the carrying capacity of the strip would increase and the people could just move on to that strip from their original homes after the area come under submergence. The proposed solution of the problem of the displaced persons was approved personally by then the Prime Minister. There were a number of discussions thereafter, a voluminous report was also prepared. But again nothing happened. After the reservoir got filled, the people had to flee from their homes in desperation with no destination to go!

#### Rehabilitation - Towards a Formal Recognition

19.6 In this way one project after another is getting constructed. People are getting displaced. But they do not have any hope for their future. On the other hand, the paradigm of development of one Five Year Plan after another continues to be the same. The situation about social justice continues to deteriorate notwithstanding a variety of pronouncements. It is clear that the problem of displacement will continue to increase in successive plans. Therefore, a satisfactory solution of this problem is now required immediately.

19.7 The most comprehensive thinking and also action on the issue of displacement have been done in respect of the projects in the Narmada valley. For the first time after the Award of the Narmada Water Dispute Tribunal, a sort of legal basis was created in the specific context of a project for tackling the problem of displacement. Thereafter, with the association of the World Bank on the other hand and growing awareness among the people on the other, gradually a situation has been reached in which it can be said that for the first time there is considerable clarity on the issue of rehabilitation particularly at the policy level and attempts have also been made to understand and analyse the problems of the affected people in depth. Nevertheless notwithstanding all these positive developments, the possibility of satisfactory implementation of a programme of rehabilitation in accordance with the accepted policies and the underlying intentions even in the case of Sardar Sarovar is not very good. In fact, today nothing can be said with authority and confidence about the future of the project-affected people. Therefore, a basic question arises here —

whether this anomalous situation is temporary and a passing phase. Or is there some basic drawback in the present system itself because of which we are compelled to remain in the state of no change notwithstanding the tall talk? To answer this question it will be necessary to consider in depth the decision-making processes and the action plans about the Narmada Valley projects.

### Sardar Sarovar – Some Formal Processes

19.8 The talk of a big project in the context of the potential of Narmada river began soon after independence. There were a number of propositions about its form and size, which it is neither possible to describe in detail here nor necessary. Like all other projects in this project also not much attention was given to the fate of those who will be displaced because the law in this regard was quite clear. According to the law, it is the responsibility of the government to provide for compensation to the people. There were diverse opinions about the height of the dam on Narmada. Accordingly, the extent of affected area and number of affected people by this project were merely a part of the technical exercises about this project. Consequently, the human side of this project did not appear in clear terms for a long time.

### The Questions of Input and Output

19.9 The most central point in relation to all developmental projects in principle today is that of input and output. It is clear that the benefits from any project should be more than the investment unless it is accepted on other considerations that the project is necessary notwithstanding the fact that the benefits may be less than its cost. But the arithmetic of input and output is so complex that there is a lot of scope for making adjustments, this side or that side. For example, the quantum of investment and the rate of interest, which should be taken as the basis for determining the likely benefits from the project can itself make and unmake the entire arithmetic, even though it may have no meaning whatsoever in real terms in the national context. That is why, even in the big projects the computation of benefits covers only a period of 20, 40 or 50 years and the benefit beyond that time-frame is taken as negligible, whereas it is possible that full benefits of a project to the national economy in the real sense may start flowing only after that period.

19.10 A variety of views have been expressed about the input-output arithmetic of Sardar Sarovar about which it is not possible for me to tell anything with authority. But even then, it is clear that since many things have not been firmed up even now with regard to this project, therefore correct estimate of input-output is simply not possible. Therefore, the decision-making process on the basis of input-output, in this case, cannot be said to be rational.

19.11 There are a number of other aspects of input-output as well. It includes, in the first instance, the direct expenses and direct benefits from the projects. But many other items of real input-output for the project, besides the direct expenses only, cannot only be of equal importance compared to the financial input-output but even more. The impact on the environment, the impact on health and the impact on the economy of the people are some of the more important aspects. There has been a lot of talk about the impact on environment but it has remained merely a "war of figures" so far in the absence of a firm basis for its determination. The situation about the impact on health is not clear in the least so far.

#### Ignoring the Ill-effects on Economy

19.12 Perhaps if some attempt had been made, it would have been possible to have some idea of direct and indirect effects on the economy of the people. But there was not much thought about this issue because of a basic defect in our system. This relates to the fact that the people, who depend on natural resources for their living, have no clear right under the law. Therefore, this element is either not included in the computation at all or if something is done it is just for the sake of formality. This is what has happened in the case of Sardar Sarovar as well. The effect on the economy of the people in the down-stream beyond the dam has not been included in the profit and loss account of the project. Similarly, the loss sustained by the affected people of this project is nowhere mentioned in its accounts. Even the situation about the rehabilitation of the affected people is not very good. In the first instance no clear policy was framed about rehabilitation. Therefore, there was no question of the inclusion of this element in the input-output account. Similarly, the effect on the economy of the people because of the associated activities of the project has also not been included in that account.

19.13 The root cause of all these deficiencies is our defective law. Thousands of people will become homeless because the dam is being constructed, thousands of people will have to move out from their villages because a sanctuary has to be established for accommodating the wildlife, <sup>likely to be</sup> displaced by the dam, thousands of people will be evicted from their lands because their land will be required for compensatory afforestation in exchange of the forests which will come under submergence, thousands of people will be prohibited from entering the forests and grazing their cattle because it will be necessary to check erosion of soil to increase the life of the dam - all these measures are necessary concomitants of a big project. And it will not be proper to say that big projects should not be constructed only on account of these problems. But how is it possible to deny the fact that some people will be affected by a particular project in so many ways? If everything in our system is assessed in terms of money, then why the natural rights of these people cannot be presented in such a way that a correct account of input-output of the project is known to the nation and the concerned people also can get justice.

19.14 In this way it is clear that the government account of the input side of Sardar Sarovar project is incomplete. That is not all. If the experience of big projects executed so far is any guide, the cost estimates of this project also cannot be said to be very reliable. The larger a project, more time it takes for its completion. Therefore, the concern of a person about the future, who is responsible for taking the decision today about a project can only be in the form of a moral responsibility, not in practical terms. Unfortunately, what is happening today. That the practical is primary and morality has become a synonym of impracticability. That is why it is common to under-estimate the costs and over-estimate the benefits of a project. The cost of most of the big projects increases many times as compared to the initial estimates. In the end, the real profit which accrues may be just a fraction of the original estimates. The thinking in this regard everywhere is the same. If one can manage somehow or the other the figures of input-output, the project will get approved and once a project gets going, the government will have to continue with it. And when the project continues through the execution phase, all interests will also continue to be served as usual in their normal course.

19.15 The estimates about the cost of Sardar Sarovar has been quite variable from the very beginning. The cost estimates of this project crossed 6 thousands crores by the time it reached the state of approval by the Planning Commission and before the ink had dried on the sanction letter a figure of Rs. 11,000 crores was being quoted as the estimated cost. It is believed that if this trend continues, the day is not far when the people will talk about this as a 20,000 crore project.

19.16 The situation is similar in respect of the figures on rehabilitation. In the first instance, the provision for rehabilitation was less than the Rs. 100 crores, now it is estimated as more than Rs. 500 crores. There is a talk about getting a loan for rehabilitation from outside. If rehabilitation of the displaced people is done in keeping with the spirit of social equity, even this amount may not be sufficient. In this way, what will be the final estimates about the input-output, nobody can say. Sardar Sarovar has become a symbol of new development, so it has to be completed whatever the cost!

#### The Big Question of Social Equity

19.17 The biggest question in the national accounting of input-output relates to social equity. Who is the gainer, who is the loser? are the most important questions facing us. Our big projects do not even make a mention of these facts. In other words, it is expected that the ordinary sum of profit and loss is enough. We have discussed about it in detail earlier. It will be necessary to state at least this much about Sardar Sarovar that the debate instead of being based on facts, is being raised to the emotional level. To put forward an emotional plea is the easiest method of ignoring the real weaknesses in the argument. The projection of this project as a 'life-line of Gujarat' by the State may be in order in its own place. But the people whose very thread of life is being snapped by this project right now cannot be ignored. There is yet another important question in this emotionally surcharged atmosphere - that whether the only method of solving of the human problem of drinking water is the Sardar Sarovar as it is, the Sardar Sarovar of exactly the same dimensions, of the same height, the very Sardar Sarovar which must be constructed by cutting the thread of life of exactly the same number of people? Can this big project, claimed to be associated with the human problem of drinking water, itself not acquire a human face? And then how many people will get how much water after how much time? And what arrangements will be

made for those who will not get water from this project? All these questions remain unanswered, notwithstanding the long long debates.

19.18 The full account of the true input and output of Sardar Sarovar is, thus, clearly surrounded by many many questions. In fact, in this case the full process could not have been completed in a formal way, because many of the questions raised above are outside the scope of the laws and rules of the formal system. Even then if these questions had been discussed in the open, it was possible that there would have been greater clarity on some of the issues. But the whole process from the very beginning has remained almost like a tug of war between a variety of interests pitched on either side. In the first instance, the dispute was on the issue of distribution of water about which debate continued in the courts for years. Afterwards, out of sheer desperation in the end, a way was found on the basis of a mutual discussion amongst the interested parties. But in that high level discussion, the interests of the 'abstract' state were given priority and the question of social equity in relation to the use of water and the people directly affected by the same remained unseen. The life of these people in those decisions just remained as one of abstract items which could be a subject of negotiations and barter. The entire process of decision-making afterwards remained under the cover of secrecy. As inconvenient things started coming out one after another, they became subjects of dispute and thereafter attempts have been made to resolve them, somehow or the other, through merely some patchwork.

19.19 I have discussed in detail (Chapter 15) about the use of water in the context of the social equity. Sardar Sarovar is a symbol of that process of centralisation, which is gradually enveloping our whole national life, in which the area of the authority of the system is becoming manifold by acquiring monopoly over all sorts of resources and also by assuming the responsibility of their distribution. Therefore, there is no idea anywhere about the alternatives and their arithmetic. For example, what would be the position if the use of water of Narmada were to begin from the point where the rain drop first touches the ground, instead of allowing to flow on and then collecting it in a dam and take the same to those areas which are already quite advanced? What would have been the benefit to the nation in overall terms in this case? And then the larger social gains which may accrue because of even a small increase of production in a

backward hilly area may be many times compared to the diminutive dimension of the bare little figures.

19.20 There is no account anywhere about the effect which this project will have on the rights of the people in the catchment area. The Government of Maharashtra had started a number of irrigation projects in a haste, well ahead of the work on Sardar Sarovar so that their claims over the water in the catchment area falling within that State is established. But in Madhya Pradesh there is not even a discussion of this aspect. In this way, the use of water is basically being determined not on the basis of systematic planning, but on the basis of competition, understanding and initiative of different States. But a decision about the use of water on the basis of this type of action by different claimants is neither proper nor in the national interests. This process cannot be credited with the aura of social equity.

#### Determination of Public Interests

19.21 It was possible to discuss all these issues even within the frame of our present legal system provided action had been taken in accordance with the spirit of the law rather than mere observance of the formality. Here, I am referring to the 'public purpose' under the Land Acquisition Act. As I have said earlier, the question of public purpose so far in our country has been looked at within a very narrow frame of the colonial tradition. Can there be a greater irony that in the determination of public purpose in the present system in our country the people are nowhere in the picture. Public purpose has become a prisoner of the pen of government officials and pronouncements of political leaders. 'Government decision' is being accepted as the synonym of public purpose. 'No one has a right to raise any objection about the decision of the omnipotent and audacious statement of the rules, has been given a silent approval by all.

19.22 If the process prescribed under the Land Acquisition Act had been followed before the land was acquired the question of public purpose would have been raised. Before the final decision about acquisition of land of the people was taken it would have been possible for the people to question the governments' claim that the project was in public interest. Moreover, the people themselves could have presented their side of the case. But as we will see today the decision to acquire land is taken in advance and the process of acquisition follows. In this situation, the question of public interest either is not raised during the land acquisition proceedings of the court or if raised it serves no purpose at all.

19.23 Therefore, today what constitutes 'public purpose' is decided by the government. The government is a part of the organised sector of the country, it symbolises it. Therefore, the government accepts the idiom of the organised sector. If public purpose is properly determined, then the question about the life of the peoples the question about those people whose thread of life is being snapped, would have arisen in the ordinary course. As I have discussed in detail earlier (Para 16.13, 16.36), that the needs at two different levels, namely, one relating to hunger and the other relating to comforts are qualitatively different and there cannot be any comparison between them. Therefore, in these matters a decision can be taken only on the basis of moral and national values. When our country is dedicated to the establishment of a socialistic order, then how can the right to life of the people be put at stake in the interest of the some abstract general good.

19.24 So far as the question of Sardar Sarovar is concerned, there is one more issue involved. It is also concerned with the interests of some larger sections, particularly the Scheduled Tribes. About 70% of the population in the area of submergence of Sardar Sarovar are tribals. In some areas, village after village are entirely tribal habitations. In their case, mere payment of compensation to the effected people as individuals and mere economic rehabilitation cannot be considered to be enough. It is necessary to keep in view their social system and the emotional part of their life. Not only there is a provision in the Constitution in this regard, but here the broader question of human rights also comes up. In the absence of any opportunity for discussion on public purpose, even in Sardar Sarovar, like all other projects, there was no discussion about the special situation of tribal people and their rights. Of course, it has been accepted in principle that the rehabilitation of the tribal people will be in the form of a community. But this affirmation has neither been given the form of a right, nor it can be said to comprise a dependable promise; it only creates some hope. As we have seen earlier, such hopes generally lead to nothing but hopelessness. For the people likely to be displaced by this project the possible social disorganisation, dispersal and destitution appear to have become the destiny. Can there be a value or a measure for all this in the scale for determination of public purpose?

19.25 Unfortunately, today "public purpose" is sought to be presented only in terms of a game of numbers ignoring all questions connected with basic human values. A plea has been made in some documents especially prepared for giving information about Sardar Sarovar projects, to make a choice by putting on one side the interest of 1.7 lakhs people and on the other side that of 47 lakhs. This presentation itself is a symbol of disturbed state

of wind, because of which development itself is becoming a symbol of destruction in our country. This logic of numbers cannot be accepted at all, particularly when the affected people belong to the weaker sections particularly the Scheduled Tribes. Separate provisions have been made for protecting the interests of their communities in our Constitution precisely to protect them against the onslaught of such arguments. But is our administrative system prepared to fulfil this responsibility from the core of its heart?

19.26 Here we come to the question of paradigm of development itself. The case of big projects like Sardar Sarovar as projects serving public purpose is being presented by way of creation of irrigation potentials, generation of electricity and provision of drinking water. I have already discussed the question of drinking water. But can irrigation and electricity by themselves be considered automatically as a synonym of public purpose. In the present situation, irrigation and electricity by themselves cannot be considered even a synonym of development, let alone public purpose. So long as there is no clear answer to the questions 'electricity for what' the stand that 'electricity is for development' cannot be accepted as such. Similarly, without getting a clear reply to the question 'irrigation for what?' irrigation can also not be given the high status of public purpose.

19.27 If electricity is used for promoting the 5-star culture, it will be against the public interest. Similarly, if irrigation is used for producing tobacco or irrigation serves the interests of a small group, it adds to its power and for the majority of the people a state of resourcelessness after sale of land becomes the destiny, then in that situation even irrigation cannot be said to serve public purpose. For establishing public purpose, it is necessary that the objectives of those projects must stand the test in a broader frame of social equity. At present, there is no process at any stage in our developmental programmes planning review or implementation which may make it obligatory for the authorities to establish in a systematic way. The public purpose credentials of a project. That is not all. Even in those cases in which the basis of life of the people is being snatched away openly, it is not considered necessary to raise such questions. Those who raise such questions are considered to be odd persons or anti-development people.

#### Disregard of Legal Processes

19.28 As it is, the Land Acquisition Act itself is not in consonance with the spirit of our Constitution. But still the process provided therein could be at least some check on the use of authority. Unfortunately, not only there has been no serious debate after independence on the basis of principles referred to earlier about this law, but not much attention was paid to the basic dissonance in the new context primarily because even its formal routine has been ignored. It is incumbent under the Land Acquisition Act to ask the person

whose land is to be taken whether he has any objection and give an appropriate decision after hearing him. The question of public purpose could also have been raised under its provisions. But like other developmental projects, in the case of Sardar Sarovar and also Indira Sagar, the government decision to the effect that these projects shall be taken up come first and the proceedings, about acquisition of land on the ground according to the need were started later which are continuing ever since. Therefore, today the work on Sardar Sarovar dam is continuing according to its time schedule but the process of land acquisition has been started only in a few villages. In most of the villages even the first notice has not been issued so far. Moreover, the construction of Indira Sagar is linked with that of Sardar Sarovar as about where construction a final decision was taken along with that of Sardar Sarovar. The work there also is continuing even though with a slower pace. But no process about land acquisition has been started as yet.

19.29 Now the question is that notices for land acquisition which are reached the people now under the shadow of the rising dams? Will it be possible for the people to raise questions about the projects or even about their right to life? Will it be possible for them to say that the proposed projects will not serve public purpose?. Similarly will they be able to say on the strength of their more fundamental rights that if they are forced to move out they will be deprived of the right to life. And when these questions are raised before the government will it be under any obligation to find a satisfactory solution and get their consent before the work proceeds further? These questions can continue to be raised right from the local courts to the highest seat of justice, but the construction of the dam will continue, its shadow will continue to become darker even as their prayers fall on the deaf ears of the system. To move out from their homes and to get alienated from the basis of their life is their destiny. In this situation, it is clear that even if the basic questions, which can be raised under the law are raised by them, which can be raised under the law are raised by them, it will have no meaning. The Courts on their part perhaps will also express their helplessness on this very ground that the project had been taken up after getting proper clearance.

19.30 In this way in the process of land acquisition, as is being followed at present, the question are being rather ignored. Its scope has been circumscribed only to the question of compensation payable to the people. Even here only partial consideration is not possible because there are questions about the right over land, question about the quality of land, questions, about the rate of compensation and a varieties of other questions, which will

neither be heard in every case nor will there be a decision on each of them. In this way it cannot be said that in the entire process of land acquisition which is initiated after the project has been sanctioned and started, even the intention of the present law itself is being honoured. Only the routine formalities of the law are being fulfilled. In this way, the right of the people to be heard before the land can be taken over under the Land Acquisition Act itself gets abrogated. This basic right gets abrogated because of distortions in the process without following any Constitutional process for the abrogation.

### The Process of Sanction

19.31 The formal system is ordinarily designed after considerable thought to ensure that no aspect, big or small, remains unseen and there is conscious and well-considered decision on every point. It is this process of our system, which is denounced as bureaucratic abstractionism because it leads to unnecessary delays on account of procedural wrangles prolonged debates on innocuous points. It is clear that all meticulous details of sanction procedure should have been adopted in the case of such big projects. Like many other projects, it appears that even in Sardar Sarovar the preliminary work was started without appropriate sanctions. A long time passed by before getting the clearance and, in the intervening period, there were many a change in relation to the law as well as the thinking on the subject. As we have discussed earlier, the picture is not clear on a number of important aspects of Sardar Sarovar project. These includes seismological studies, impact on health, environmental effects, soil conservation in the catchment area. rehabilitation and such like. The approval to this project was given simply on the basis of input-output and technological considerations without the benefit of studies on any of these other aspects. Even though the clearance was a conditional clearance but the question is as what could be the implication of putting those conditions in the clearance order? Is it possible to stop the project if those conditions are not fulfilled? If this is not so, then it is clear that either all these aspects are unnecessary or it is presumed that their compliance is necessary only for removing some legal or other obstacles which may involve, at the most, some financial burden which will have to be accepted in the national interest.

19.32 The truth is that even this is not clear as to how much importance is being given to the points included in the conditions. A number of dams are held up today even after they are almost complete, in some cases construction of canals is held up because of the holdup of environmental clearance by the Central Government. In a few cases, where clearing of forests was started in anticipation of the approval of the Government of India, the concerned officers have been threatened with legal action, the concerned

But at the same time, the conditional clearance has been given to Sardar Sarovar which will involve direct submergence of about 14,000 hectares and another 40,000 hectares by Indira Sagar which is linked project of Sardar Sarovar. From where will the land for compensatory afforestation will be available is not clear. Moreover, if other lands are not available for rehabilitation of the displaced people, the World Bank contract provides for assignment of forest land. What sort of conditional clearance can this be considered?

19.33 When we see the importance which is being given to the human side and the provision made for it in this whole process, it is not matter of surprise but a matter of deep regret. Not much discussion on the human aspects proceeded the clearance of the project and no one appears to be responsible for looking after these aspects. It is an irony that simply because our formal system does not have a separate machinery for formally looking after the interests of the common man or none of the other ministries have been specifically assigned that responsibility, therefore, in the event of injustice to the common people and disregard of their rights, there is no point in our present system where the ill-effects due to development can be reviewed and suitable action is initiated for the protection of the people and reform of the system. In a formal system, everyone's responsibility is no one's responsibility. But the situation of Sardar Sarovar is somewhat different. The bulk of the affected people are members of the Scheduled Castes and Scheduled Tribes and the responsibility of their welfare and protection rests with the State itself. There is not only a Ministry, but there is a specific provision in the Constitution for appointment of a Minister in the Cabinet at least in Madhya Pradesh who shall be in charge of the affairs of the Scheduled Tribes. At no stage in the process of approval of such a big project, having dire consequences for the tribal people, there was any consultation with any Ministry/Department concerned with tribal welfare and nor anyone of them considered it necessary to take up the cudgels from their side. Therefore, this aspect has remained fully ignored.

19.34 In this way, the approval of these projects became a routine process and caution was not exercised even on many of these important points which the system itself considers vital for the final decision. In particular, the interest of the common man remained unseen. I will not get into the debate about why and how this clearance notwithstanding all the infirmities noted above. But one thing is clear that when the work on a project starts, a variety of vested interests gather around it which includes contractors, politicians, officers as also national and international institutions. In that situation, pressure for its clearance is natural. And it is these pressure-groups which find some device or the other to overcome the legal hurdles. Just as the process of land acquisition has been reduced to a mere formality, similarly, all other aspects except input-output and engineering which the system itself

itself believes to be vital, have been taken as a mere formality, which could be complied with in one way or the other.

19.35 There is one more aspect about the clearance of Sardar Sarovar project which must be mentioned at this stage. One significant section of our elite is very much concerned about environment. Therefore, attempts are being made to bring about a consonance between environmental considerations and developmental projects but its scope is limited to the world-view of that elite only. The Sardar Sarovar project was held up for a long time on the issue of environmental clearance was given to this project in June, 1987 while the clearance of Planning Commission came in Oct. 1988 and that too under unusual circumstances. The reasons, for which the clearance was held up till then remained as they were unchanged. It is only for the sake of formality that certain conditions have been put in the clearance. But after a project gets going, a track about those conditions being fulfilled; And if those conditions are not fulfilled, can something be done? Perhaps there has been no thinking about the questions. The clearance had to be given, so the form has been maintained!

19.36 Thus the Sardar Sarovar project was cleared without looking into many aspects and thereafter work has also been started on its strength. The irony is that so much awareness has been generated about the impact on environment and suitable provisions have been incorporated in the law that a project like Sardar Sarovar could be held up for such a long time. It is another matter that even that law proved to be rather weak before other forces and in concrete terms could find expression merely as a set of conditions in the sanction letter. But no one need bother about questions like what impact will a project have on the people? What will arrangements have to be made for safeguarding their interest? There is no law concerning these issues. They are dependent entirely on the goodwill of the system.

19.37 Therefore, according to the present system, every brick of a dam can be accounted for, every rupee in its cost estimates can be expounded, every tree with fresh can be counted for ascertaining the possible effect of the project on environment. But it is not considered necessary to count the number of people who are likely to be affected before a project starts. Perhaps it is thought that the man will be able to take care of himself. Even if, he has to face some trouble in the interest of development, that will be in order. That is why there is detailed discussion about the problems of the people, long essays are commissioned about the social situation of the tribal people, there is unending talk about rehabilitation, they are also

punctiliously mentioned in various agreements. But it is not considered necessary to state clearly that if on account of a project the loss to the people is such which cannot be compensated, if their community breaks down which cannot be resurrected, if their economy is destroyed which cannot be rebuilt, then it will be in order to refuse approval of that project or some conditions could be imposed. Whatever may happen to the people - does not come in the account of the project. It is perhaps because its value cannot be assessed or else there is a tacit belief that man is man, he will be able to look after himself as a man.

#### Provision for Public Purpose in the Project Structure

19.38 Even after the interests of the project-affected people had been ignored at all levels, it could still be hoped that vigilance would be exercised about their welfare at the operational level. But even here, instead of showing concern about their rights and the problems, not only a stance of indifference instead of concern but an attitude of dear opposition was adopted by the system at almost every stage. The most important reason for this attitude appears to be the vanity of the system because of the authority which it wielded. The first truth of the system is that its own position is right. There is a general tendency to prove the other side as wrong or to ignore them so that there is no need to enter discussion and go into the merits of any proposition. Whatever structures have been created even for the big projects, the people are conspicuous by their absence. These structures may comprise besides government officials, at the most people's representative or social activists, and experts. The government officials come to these forums donning different masks according to their respective positions in the system so much so that some of them may claim even to speak about and even for the people. But the basic spirit in this whole affair is of compromise with the system if not full concurrence with all its proposals. The situation in our country today is that besides the government officials, other people often find it difficult to speak for the people. On the other hand, the level at which the common people can put their case, can understand what others are talking about, is the level of the village or a group of villages which is almost unknown in our system. In the end, in these big structures, what could be the weight of the other people? Their participation is just notional and if someone amongst them sometimes points out the bitter truth, his voice is not even audible in those big assemblies. There is not scope for the people's voice being really heard in the present system.

19.39 Initially no special arrangements were made for the relevant studies with regard to Sardar Sarovar Project. And when the studies were started, in many cases it was too late. That was not all. The methodology adopted by the institutions was not proper particularly for the study of the tribal society. I had raised many questions on this point, some discussions also followed. But after that there was a studied silence all around, perhaps drawing the conclusion that nothing was possible. Moreover, since social studies, like many other conditions, play only a notional role, not much importance is given to their opinions. The University of Sagar and Tata Institute of Social Sciences have been given the responsibility about conducting studies about displacement and rehabilitation in MP and Maharashtra respectively. These institutions, all being concerned about the situation of displaced people, have opined that the governments in both these states were not ready for rehabilitation. In their opinion in this situation, it is not proper to allow the work on the projects to continue. But when rehabilitation has not been considered as the right of the displaced persons, the question whether rehabilitation is possible or not perhaps has nothing to do with the continuance of the project or its stoppage. It appears that this is the understanding even at the top government levels. There has been no change in the method of work of the governments even after such drastic recommendations by the institutions appointed by them themselves. If this is the attitude of the government in relation to such a basic issue like rehabilitation, nothing can be expected in relation to other smaller anomalies, which even though small may be decisive for the interest of some individuals. Thus, in practical terms, there is almost no use of the monitoring system so far as the conditions of the displaced people is concerned.

#### People's Reaction

19.40 Thus, the provision for the rehabilitation of the project-affected people of Sardar Sarovar, was made at the policy level after the Tribunal Award and the World Bank's agreements. This provision, even though it was much better than for any other earlier project, was not adequate. But other deficiencies of the system made it much less effective and satisfactory. Firstly, the human aspect has been dealt with at all levels in an entirely routine fashion. Secondly, no internal system was established which can be responsible for continued vigilance so that checks could be applied and improvements can be effected immediately something goes wrong. In this situation, the problems of the people remained unattended and adverse reaction from their side was the natural consequences. The reaction from the people is a common phenomenon everywhere. They have yielded some positive results as well. In many cases, not only there was an improvement in the

facility of rehabilitation, but even some changes were affected in the projects. In some cases, the projects had to be stopped or abandoned. But the people's reaction in the case of Sardar Sarovar has been a long drawn one and quite comprehensive. Moreover, besides the state and the Central governments, international institutions like World Bank are also concerned with it. Its scope has been increasing. Therefore, it is necessary to discuss it in some detail.

19.41 As happens usually in developmental projects, the people in the beginning were not aware of the Sardar Sarovar project. Gradually as more information became available to the people, they became concerned about their future. In some places, there was even stiff opposition. There was a big movement particularly in Madhya Pradesh which, however, was stopped at a stage and now it is only a memory. But there was unconcern amongst many people, particularly the tribal people, for a long time because of their faith in their Mother Narmada. They could not even think that the omnipotent Great Narmada could be girdled. In this way, these people, confined to their small world of the Valley, till sometime back were completely oblivious about the gathering storm outside. That is not all. Even now when the big dam is rising before their own eyes, in their hearts a storm of hope and despair continues to swirl. Even now if they see a ray of hope from any side, they are filled with enthusiasm. For who knows that their faith may prove to be right by the Grace of their Mother!

19.42 The first displacement in Navagan took place in 1960-61. But the work on the project did not proceed much further for about two decades. It was after the Tribunal Award that the same movement started again. In the first phase of displacement, the people had to be content with cash compensation, that too nominal. But there was one important difference in the case of Narmada. There were clear provisions for the rehabilitation in the Award and the World Bank's agreements on the basis of which there could be a dialogue. The people could put their claim before the government and the government could also present its site to them. In this way, the first form of people's reaction was a dialogue about the conditions of rehabilitation. A number of conditions in the scheme of rehabilitation were improved as a result of this dialogue in which (i) the decision to treat the oustees in Gujarat at par with the oustees of MP and Maharashtra and (ii) eligibility of the landless to get the lands are the two most important gains. The people have been coming together on many issues concerning implementation at the field level and have been placing their points before the government.

19.43 One important consequences of the questions being asked by the people was that the people became increasingly conscious about their own situation and also the state policies. It also became possible for them in these discussions to put some question marks about the government's policies and also question the government whether those policies can really be implemented. It was not necessary for them to go very far to see what a big difference there could be between policies, promises and the real situation. The debacle of Ukai in the neighbourhood was before them.

19.44 We have discussed in detail the displacement and rehabilitation of Sardar Sarovar (Chapter 18) in which it was clear that the issue of rehabilitation was surrounded by all sorts of questions at all the three levels - policy, procedure and practice. So far as the system is concerned, everything is in the form of abstract figures and written clauses which can be interpreted in a number of ways. But for the affected person his experienced reality is the truth, that reality is everything for him, the abstract figures and policy clauses cannot change it, he has no concern with them.

19.45 On the basis of experienced reality and the discussions with the government, the people of the valley began to realise gradually that they will not be able to get the facilities as per the policies and the promises. Moreover, many of them will remain outside the scope of that policy. Therefore, even if the policy succeeds they will have nothing but destitution. Therefore, even though some people in Gujarat are still hopeful, having faith in the goodwill of the government. That their problems will be solved, the people in areas of Maharashtra and MP have come to the conclusion that rehabilitation is not possible. Moreover, they have come to know that under the law they are entitled only to cash compensation; in the law there is not even a mention of the rights of innumerable other people not owning a piece of land. Further, even if the right is conceded, that will not be a reality for many of them because of the absence of records. Moreover, even the experience of those who have been rehabilitated so far is not a very happy one.

19.46 The most important question is that even if the people's claim for land is accepted, is there sufficient land for rehabilitation? With the proposal to introduce the system of

purchase of private lands for rehabilitation the concept of rehabilitation itself is undergoing a sea-change. The government will be relieved of the great responsibility of dealing with the stark reality by limiting itself to merely payment of money. If an ordinary person is not able to purchase land or if he is deceived after he gets the land, he will have nowhere to go, he cannot depend on anybody. There appears to be no firm base for the tribal people in this new scheme. No one can say with surity whether he will be able to survive as a community and as an individual. That is why in the situation as it exists now, most of the people in the valley have come to the conclusion that some people may get the benefit of rehabilitation, but for the common man rehabilitation is not possible. Therefore, these people have decided to totally oppose the projects and they are struggling for the same.

19.47 Even after so much has been done at the policy level in relation to the rehabilitation of the Sardar Sarovar oustees, there is one thing which is of grave concern, that is, the lack of responsibility and sensitivity in the system about the state of the people. If there was a sense of responsibility, then the system itself would have been forced to think at every point whether there was any injustice to anyone, anywhere. In the present situation it appears that the decision at every point does not flow from the sense of responsibility but is extracted under external pressure. Therefore, substantial dissonance continued notwithstanding the formal award and agreements about the practical interpretation and the scope of various conditions. And it was only when the matter came to a head that only that much was conceded with which the crisis could pass over for the time being. In the absence of a comprehensive perception, the momentary solution of the problem gave rise to other problems. In this way it all became a unending process. This is the most important reason for the people getting desperate.

#### The Comprehensive Scope of Movement

19.48 There is yet another facet of the struggle of the people of Narmada Valley. A number of people, who have been struggling in their own areas against the backlash of developmental projects, have joined hands with the people of Narmada valley

and decided to place their claims jointly at the national level. Therefore, this movement is no longer limited to the affected people of Sardar Sarovar or Indira Sagar and has got concerned with the struggles of the people all over, for establishing their right to life against the policies, projects and their ill-effects, particularly in the tribal areas. I have made it clear many times that right to life is self-created. That is above all formal premises. But even within the formal frame, the right to life is basic which has been enshrined in our Constitution. Therefore, this movement at this time is not a limited movement concerning only some dam, but has become a broader movement concerning basic principles and human values and it is necessary that it is dealt with as such.

#### And the Vital Aspect is Ignored

19.49 It is regretted that no attention has been paid to the new turn in the people's movement in the Narmada valley with its focus on the basic principles of development at the national level. All the establishments and governments are trying to see the problem within their respective limited frames. And the most regrettable thing is that the comprehensive frame is being ignored on the ground that if the demands of a few people be conceded it may give rise to the demands from many other people about their rights. Atleast this much cannot be expected from the state in a democratic system, that it could state that such and such injustice cannot be acknowledged because there is greater injustice in some other cases or greater injustice was being done earlier. After all if social justice is the foundation of our system, it is the duty of the state to undo injustice whenever and in whatever form it may be found. So long as the people's movement of Narmada valley is not seen in this perspective, a satisfactory solution will not be possible.

#### Reality of Emotional Aspects

19.50 The reaction of the people of Narmada Valley and along with them that of the people of other areas, that they will totally oppose the destructive development projects has an emotional aspect as well. The reality of emotional aspects cannot be denied particularly in the context of the tribal areas where it is the emotional aspect which can be primary and the need of whose protection is reflected not only in our

Constitution but also in international conventions. The small world of the small tribal communities - it is all inclusive - their past and present, their religion and action, their polity and economy, their identity and future. They cannot imagine their life outside. This reality cannot be ignored by merely saying that it is emotional. If this is done it will be a great injustice with these people. Even if this aspect is kept aside for a while, there is another basic reason for the opposition of the people of Narmada valley and that is the lack of confidence in the policies of the State. As I have already explained earlier, there are so many anomalies not only in the policies of the State but even in their action programmes that so long as they persist it will be a great wonder if people could trust the government.

19.51 People are opposing big dams and the dams on Narmada have become a symbol of wrong development policies. Therefore, it is necessary that there should be a national debate on the paradigm of development and it may be ensured that social justice will be the centre of the process of development. Even though it is necessary to consider this larger issue immediately, but it is also necessary to find a practical solution in the limited context of the Narmada project.

#### Consent of the Affected - An Important Pre-Condition

19.52 There can be difference of opinion about opposition to dam, but today there is full consensus everywhere on one thing that the rehabilitation of the project-affected people should be so designed that their condition after rehabilitation is better than before. In my view even this is not enough. The spirit underlying the principles of social equity cannot be said to be honoured unless it is ensured that the affected people themselves realise that they have become partners in the benefits of development of that project. If Gujarat considers Narmada as its life line, it is necessary to ensure the participation of those people whose very existence would become doubtful in the process of creation of that life line. I have said earlier that in the present situation, rehabilitation of the affected people is not possible. It will be necessary to accept some basic principles for satisfactory rehabilitation of the people. Therefore, unless a rehabilitation plan based on the consent of the affected people in accordance with those basic principles is not formulated, allowing developmental projects including Sardar Sarovar to continue, cannot be said to be really an insignia of planned development.

### The Real Face of Hurry in Expenditure

19.53 The tendency to continue expenditure on an ad hoc basis without satisfactory solution of all important issues connected with developmental projects is a matter of deep concern which must be specially noted. There are two facets here. Firstly, as the scope of work of a project goes on increasing, the vested interests also continue growing and getting more and more entrenched. It becomes difficult, if not impossible, for the ordinary project affected people, who are spread out in remote areas, to stand before the organised power of the vested groups. These vested interests have no hesitation in adopting a variety of subterfuges and undesirable tactics. On the other hand, as the quantum of work executed increases, it by itself becomes a valid ground for further continuance of the work. Therefore, there is always an attempt to somehow take the project to a stage of "no return" so that in the end, a big question of use and misuse of resources can be raised at the national level and it can be stated with equanimity that now there is no other alternative.

19.54 It appears that this is also the case in Sardar Sarovar. Whereas, on the one hand there are no signs of a solution of the problems of the affected people on the basis of their consent, on the other hand, the work on the project is being further intensified on the basis of the conditional clearance. One does not know what will be the final cost of this project. But even then this argument which is coming up must be cleared. The human rights cannot be considered negotiable. Their value cannot be assessed in terms of money. Therefore, if any project is continued without deciding the points concerning human rights the risk will have to be borne by the government. The only alternative of this can be that so long as a satisfactory solution of human aspects is not found, no expenditure of any type should be allowed to be incurred on the basis of which in the end it may be possible to state that what can be done when so much investment has already been made.

### Violation of Law and the Constitution

19.55 The full clarity about the inter-relationship between the project and rehabilitation will be possible only when there is full clarity about some basic questions about rehabilitation. The first condition for justice to the people will be that it is accepted that there has been a violation of the spirit of the present law in the process which

has been adopted for acquisition of land in various developmental projects including those in the Narmada valley and the same will continue in future. Secondly, no attention has been paid in this law of land acquisition to the right to life of the people which is basic. Therefore, this law itself is not in consonance with the spirit of the Constitution. That is not all. In the tribal areas, the State has not only ignored the Constitutional rights of the people but has over-looked their human rights. It is regretted that there is no appreciation of even the duties cast on the state by the Constitution, let alone the question of discharging them.

19.56 Some points about the responsibility of the State were raised in my previous Report. Can there be a bigger irony than that whereas on the one side the people, whose protection is the responsibility of the State, should be engaged in the struggle for their right to life, yet on the other hand the very same state may be all set to use force to disperse them. Here the question does not concern some mere technicalities of law. The question is directly addressed to human values. I wish to draw the attention to the fable of Sulaiman in which it is stated that the Great Emperor had built a very big beautiful palace. After the palace was ready, there was a big function. The distinguished guests, who had gathered from all corners of the world were all praise for the palace and the beautiful gardens around - it had no equal in the whole world. 'But what is that' exclaimed one - a tattered hut in the midst of that palace? It was looking so very odd. When asked, the emperor told "What to do, I tried my level best to convince that grand old mother to remove her hut ever since the construction of the palace began. But she did not listen to me. What to do, with the Grand Old-Mother? "Alas the modern state, which claims to be founded on equity, justice ;and fraternity could rise to the level of ;the sensitivity - of that mere monarch."

#### Lack of National Policy

19.57 It is regretted that the basic questions about displacement has not been considered at the highest level which it profusely deserves. The Central Government has been trying to formulate a national policy about displacement and rehabilitation for quite some time. The attempts for formulation of the policy are welcome but so long as those basic

deficiencies of the present system, which are not only against the public purpose but open violations of the Constitution and human rights, are not corrected, all other efforts will only remain beautiful documents. Secondly, there cannot be a same policy for the tribal areas and other non-tribal areas because there is a qualitative difference in their situations. It is only because this difference has been ignored that the tribal areas are facing a catastrophe at the moment which our system unfortunately is trying to hide under the cover of rule and law.

#### An Immediate Solution Essential

19.58 But it will not be possible to turn the face away from the need for a satisfactory solution to the immediate problems which the people are facing simply because a national policy is being formulated. Today these dams on Narmada have become a symbol of devastation caused by the whole developmental process. Therefore, if a beginning of a satisfactory solution is made here, it will be possible to get some guidance in formulation of some practical policy based on values. Not to solve the problem only because the common man who is facing the backlash of development, may not raise the questions is not only unjust but is also not a practical proposition. If the consent of the people is accepted as a necessary pre-requisite of any project, such arguments will automatically get dissolved.

#### Realisation of the Basic Change Essential

19.59 Today when people are becoming conscious of and are demanding the fulfilment of their rights from the system, it will be necessary to consider their demand in the new context and in the frame of those basic principles, which we have discussed in detail earlier, without giving reference to the earlier unsatisfactory situation which was largely due to lack of understanding. Therefore, the old things cannot be repeated again. So long as the people do not have the correct realisation about the nature of relationship, they can continue to bear with injustice and take it to be justifiable. But once there is realisation about the inequitable nature of relationships, the situation changes. When the people in a subject country, begin to question of relationships, the subjugation and derecognise it from the core of their heart, independence would have been achieved at the same very moment. The attainment of

that state of mind is the real revolution. Thereafter everything which follows merely comprise of the process for giving that revolutionary idea practical form and nothing more. There is need for great sacrifice in that process. But all that comprises merely the outer form of that revolution and not its spirit. The olden days change irrevocably after that "Revolution". The situation of the people, who are today victims of the backlash of development is similar. Now these people are not prepared to accept that inequitous system in which ivory towers may be built on the ruins of their identity. They have not only realised that this process is unconstitutional but they have also recognised now that in a sense it is clear violative of their most sacred right, the right to life. This is a revolution. The situation of the people affected by the backlash of development cannot now remain the same as earlier. It is regretted that the State has not tried to understand so far this spirit of the present situation. They are still thinking as if the old situation continues, where people will beg for compensation and make humble pleas for rehabilitation grants and facilities. They are not able to understand the great potential of the new resolve of the people to end that chapter. Appreciating this sea-change in the field situation, I myself requested the three Chief Ministers and also the Prime Minister at the Centre that they may come out of the old enclosures and prepare suitable background for the solution of the problem in this new context so that it may be possible to start a dialogue with the people (Annexures 1-7). But it is regretted that no signs of any initiative appear to be on the cards so far.

#### Use of Force Reprehensible

19.60 There are some incidents of confrontation and oppression, instead of a dialogue, which are a cause of grave concern. Recently police force was used at Banwani and Alirajpur in Madhya Pradesh in which even women were not spared and at one place even horses were used. Similarly, in Gujarat force was used against those struggling for their right to life to protect the heaps of bricks and mortar by the iron shield of the Official Secrets Act. No terms can be strong enough to denounce these events. I trust that after the clear analysis of the law, the Constitution and the human rights presented in this report none of the states will do the misventure of using force against those helpless people who are fighting for their right to life.

#### Question of National Sensitivity

19.61 The use of force in any form in the context of the struggle for the right to life is not only incongruous but is the biggest crime. It is surprising and regrettable that some responsible people have not hesitated to state that "when water will start filling this dam, the people will have to run from there with their eyes closed, they will not stay there for being drown". Yes, this is the experience so far. This is what happened in Hasdeo Bango. This has also happened in Bargee. The people continued to plea with folded hands upto last in these areas. But the rulers did not stop the work on the dams. In these cases, force was not used directly. Yet the state did not desist from giving a fatal blow indirectly using the weapon of the flood of water. This is the story of the most helpless of the citizens of free India, who have been depending on the natural resource for their living so far.

19.62 It is possible <sup>that</sup> this inhuman process has continued so far without a clear understanding about the basic issues. I do not think that the level of sensitivity in our country has reached such a low level which is no doubt reflected in the statement referred to above, where the last brick of any dam can be laid in full knowledge of the fact that there is even a single person who is fighting for establishing his right and will not move away from there and prefer to get drowned. If the national sensitivity has reached those abysmal levels, nothing remains to be said. But I am confident that this is against the general sensitivity in our country, the common man will revolt against it in sheer revulsion. If all the affected people of Narmada valley or any other project are not prepared to move away from the area of submergence for protecting their right to life, then there is no such power in a democratic system which could force them out to move away. If that happens, it cannot be done without sacrificing the democratic values.

#### The Possible Way Out

19.63 There is only one way to get over the present impasse in the Narmada Valley and that is a dialogue with the people in an atmosphere of goodwill. But today when the people of the Valley are convinced from the core of their hearts that rehabilitation is not possible, and in the current situation their arguments are irrefutable, then when they look towards the Narmada and the construction work of Sardar Sarovar over it, they cannot see anything except the social disorganisation and destruction which stares them in their eyes. In such a mental state, any meaningful dialogue is impossible. The people have taken a resolution of 'watery grave' and their decision is not to bend before any use of force. If they remain firm on this, it will be impossible for the state to fill this reservoir even after the dam is complete. There is only possibility for the change in this resolution and that is instilling of a new faith amongst the people, on the basis of policy, programmes and facts as may be accepted both to the affected people and the government, that they will be co-partners in development in the real sense of the term.

19.64 For example, the real apprehension of the people is that so long they do not get the facility for settling at another place fully preserving their social identity, all other promises for their rehabilitation are meaningless. Will the people in the benefitted zone give a befitting reply to this by agreeing to the division of the entire land in such a way that the affected people can settle as original villages in the new setting without breaking the identity of their social unit and that in this process the local landless labourers are not forced to face a second displacement' in the name of making a place for the displaced and that the landless also have the right to remain there and make a living with dignity. All the

proposals so far made by all concerned have one common feature. It is always made certain that no land owner in the benefitted zone is put to the slightest disadvantage. Moreover, while opportunities are sought to be created for windfall gain for a few, there is no concern even for the last thread of the support of life of the resourceless people getting broken. So far as the problems of affected people are concerned, the issue is expected to be resolved by the nation or the state as the case may be and whatever the people may get is their luck, it is not in the least the concern of other people who stand to gain. Will the people, who have the hope of getting big bonanza in future, be prepared to give a share of that benefit of development for the sake of making the affected people partners in development? Even a law like that of Madhya Pradesh or Maharashtra will not be enough for this purpose. They have to go much farther ahead. Will it be acceptable to the people and the state of Gujrat. In any case, it is clear that the minimum pre-condition for the construction of a project is a plan of rehabilitation based on the consent of the people.

19.65 But even if this proposal is accepted in principle, it will take sometime plans can be made accordingly in the case of Sardar Sarovar and also other continuing projects. But how the people are to believe that this exercise will not merely be used as a device for passing time? In today's situation, the people cannot be reassured easily because the image of the government/administration is rather dark so far as fulfilling the promises is concerned. But the impression of the common man from the hurry which is being shown presently in the construction of Sardar Sarovar in particular is that they are keen somehow or the other, to take it to a stage of "no return". The first thing will be to change this atmosphere. A comprehensive work plan for rehabilitation should be prepared with the concurrence of the affected people which should include rehabilitation. If the concurrence of the affected people cannot be obtained, then there is no other alternative but to stop the work of the dam until such time as their concurrence can be obtained.

19.66 Looking to the possibility of some village in the valley coming into submergence this year itself, the affected people have pressurised their respective State Government for providing them protection. First of all, the Govt. of Madhya Pradesh was agreeable (March 90) to request the Central Government for a review of all the matter concerning Sardar Sarovar. Similarly looking to the situation of the affected people of their State, the Government of Maharashtra have also accepted (April 90) that so long as a rehabilitation plan with the consent of the people is not prepared, no such work on Sardar Sarovar should be done which may obstruct the flow of Narmada and the possibility of more water than normal collecting in the valley may increase. This proposal can be the basis of consensus among all the states for future discussion. I hope the State and the Central Government will be able to find a reasonable solution.

Justice for All

19.67 I had made some recommendations in my last report with a view to give a concrete form to the principle of partnership in development, which need not be repeated here. The first vital step in relation to the developmental projects will be that without going through any further formality, a declaration should be made from the national level that at least in the tribal areas suitable arrangement will be made for the rehabilitation of all those people who have already been displaced by various projects. These people are victims of such a man-made calamity which on one side has been promoted by the government itself and on the other hand the governments did not discharge its responsibility of providing the people due protection. If the state provides assistance for natural calamities and also helps people who are victim of accidents, Why should it not come forward in these cases where the state itself is doubly guilty?

19.68 Similarly, all the ongoing projects should be reviewed and arrangements should be made for the partnership of the people. Until such time this is done the project should be stopped. In future, if a project involves alternative use of these natural resources including land on which some people depend for their living, they should not be cleared in any case unless the affected people give their prior consent.

19.69 Only such stringent checks on the system can be effective and it will be possible to ensure partnership of those people in deciding the path of development who have been asked to make sacrifices for that development. Moreover, the argument that someone will have to bear the cost of development will have to be rejected for good. Instead, the proposition should now be for asking those people who have already got unexpected benefits or likely to get such benefits, not merely to pay the cost but to repay the debt which they owe towards the development. In future the first condition of development should be that everyone becomes a partner in the benefits of development. That is not all. Only that programme of development which can wipe the tears from the eyes of the most inconsequential person, will show the right way of development- all other schemes may be given whatever epitaph one may like, they cannot be called development.

## SELF GOVERNANCE SYSTEM OF TRIBAL SOCIETY - A BROAD QUESTION

### National Scene

A society has the natural right of self governance. The prestige of a community and the dignity of its members are linked with this right. But, there are numerous forms of self governance system at operational levels. Broadly, there can be two types of arrangements for this purpose. Firstly, direct the participation of people in which every member of the community directly participates in the self management system. Secondly, representative system, in which the right of self management is used through the representatives. When a Society becomes very large, representative system becomes necessary. The self management system in real sense of the term is the one in which people have direct participation. Such an arrangement is possible only in small communities in which every member of the community is an equal partner in the social life. It was with the objective of establishing such a system at village level that a provision was made under Article 40 of our Constitution to develop the village society in the image of a republic.

20.2 The truth is that any form of centralisation is against the basic spirit of democracy. This fact was clearly brought out in the deliberations in the Constituent Assembly about Village Panchayats. Some members were of the view that our Constitution had not been formulated in the image of a system which could be claimed to comprise self-governing village community as the building block. But, by then, it was too late. The work of formulation of the constitution had proceeded too far. No basic change was possible at that stage. Therefore, the members approved the provisions in Article 40 in the hope that when the country will move ahead there will be gradual change in the structure in accordance with the spirit of that provision and in the end self-governing village community will become the foundation of the entire structure.

### Self-Governing System for Tribal Areas under the Constitution

20.3 The British rule had consciously broken the traditional self-

governing social system of our country. A formal system was superimposed in its place whose objective was to strengthen the pillars of imperial power and to break the sense of self respect of the people so that they may never raise their heads again. But, in view of the stiff resistance in the tribal areas, this new system was not fully enforced there. Therefore, the self-governing communities continue to function, to some extent there which are still functioning.

20.4 There is a provision for enactment of separate laws for the tribal areas under the Constitution. The provisions under the 5th and the 6th schedules of the Constitution in this regard are so extensive that these schedules are in a way 'Constitution within the Constitution'. The basic spirit of these special provisions is that even in relation to the formal system which may be adopted for the tribal areas, the tradition of the tribal society should be accepted at basic so that the tribal people have the opportunity of moving ahead entirely in accordance with their own understanding about the situation and no outside system should be forced on the tribal society.

20.5 The Governor has been given full powers in this regard under the 5th Schedule of the Constitution. The Governor can suitably amend, according to the need in each case, a law enacted by the State legislature or the central legislature. He can also frame new laws. The objective of this provision is that the legal system of the tribal areas should be in consonance with the tradition of the tribal society. Thus it was not necessary for the community to adapt itself with the legal system, but there is a provision to adapt the formal system in accordance with the tradition of the tribal society. Pt. Jawaharlal Nehru with a view to giving this basic premise of our Constitution a real form had formulated some basic principles for the tribal development known as Panchasheel. According to the Panchasheel -

- (i) the tribal people should move ahead in accordance with their spirit and understanding...
- (ii) their rights over land and forests should be honoured...
- (iii) working teams should be trained from among the tribal people themselves...

- (iv) the administration in these areas should not become heavy and there should be no surfeit of programmes...
- (v) the results of development in these areas should not be assessed in terms of statistics or estimates of expenditure but they should be in terms of the development of the quality of human character.

20.6 In this way, this initiative by the first Prime Minister of the country himself for giving concrete form to the intention of the Constitution gave the hope that the anomalies which had arisen in the tribal areas before independence will be removed as early as possible and a new system in consonance with their tradition will be established very early. But this did not happen. I have discussed in detail the basic reasons for this in my previous report. I have also made a number of points in this report as well. Briefly it can be stated that it is only in the areas under the 6th schedule of the Constitution that the traditional system has survived to a large extent. Whatever change has come about there has been in accordance with the wishes of the people there. Eventhough the traditional system is still continuing in practice to a large extent in many tribal areas under the 5th schedule as well, but it is not recognised formally. Therefore, in the perception of our formal system nothing of the tribal tradition survives today.

#### 5th and the 6th Schedules - Practical Difference

20.7 The main reason for two different courses being adopted with regard to the traditional institutions in the north-east and the rest of the country after independence, is the basic difference in the Constitutional provisions. The Governor has been given necessary powers for making suitable changes for the areas under the 5th schedule. But, if the Governor prefers not to give any directions in this regard, all the laws of the Centre and the State automatically get extended to these areas as they are. On the other hand, the situation under the 6th schedule is entirely different. No law of the Centre or the State can be extended to those areas in respect of the subjects mentioned in the list unless the District Council is agreeable. In other words, there is a pre-condition which must be fulfilled before any external law can be extended to these areas; they cannot get extended automatically. The result is that the traditional systems of the tribal areas under the 6th schedule are still existing. But all external laws and institutions have got superimposed on the tribal areas under the 5th schedule without any thought or consideration. Even-

though the Governor has been endowed with unlimited powers in this regard, yet he did not give any attention to this and no action was taken on this vital issue concerning the life of the tribal people.

20.8 In this situation, the new administrative system and the new laws gradually were extended to the tribal areas in the rest of the country. The administration not only got an opportunity but used the right to interfere in the life of the common man under these laws. Important matters such as command over resources, management of land, settlement of personal disputes and maintenance of peace, etc., which used to be the responsibility of the community now became the responsibility of administration. Moreover, responsibility for a number of developmental programmes such as agricultural development, education and health services which were started in these areas, was vested with government Departments. In this way the traditional institutions in the tribal areas, except in the North-East, had no legal rights or formal responsibility in any of these matters. Under the law they could on their own only manage social affairs. Even the scope of the social matters is getting reduced because of the disregard of these institutions by the state. Other people are interfering in their social matters also under the cover of ordinary laws. We have seen earlier that the traditional institutions do not have even this much of right that they can decide whether drinking should be allowed in the community or not. Even matters concerning marriage, divorce, hereditary rights, etc., are being taken to the Courts of Law in many cases. The external system is getting superimposed unconsciously because of lack of clarity about the areas of responsibility of the traditional institutions and, to that extent, their traditional institutions are becoming increasingly weak.

20.9 Thus, the new institutions and the new laws have been extended in a routine fashion in the tribal areas after independence. Therefore, in most cases even some of the formal systems of earlier times were not kept in view, not to speak of the tribal tradition. The main reasons for this neglect was that firstly many tribal areas were part of many small princely states. All these states had their own laws and rules. But there were some conventions as well about which there was no written record anywhere. All these laws, rules and conventions remain unnoticed after the independence. Secondly, many tribal areas were parts of British provinces. But, even there the system of these areas was quite different from the rest of the province. The British rule could get extended to these areas very gradually. In fact, the British had to face resistance from the tribal people at every step. Since the tribal people lived in hills and forests, the means of communication

were almost nil. Therefore, the customs in these small areas were very different from other areas. In this situation, when the British established their authority on these areas, they kept in view their traditions. In many places the traditional system of the tribal people were allowed to remain as they were and in such cases they were even formally recognised. These systems continued even after the independence.

#### Big States and Old Systems of Tribal Areas

20.10 This scene changed as large states were carved out after independence. The tribal areas usually comprised only a small part of their states. There was not a single tribal majority state on the eve of independence. The first effort of these big states was to extend uniform laws and establish the same institutions throughout the state. In this effort, the special institutions, which were established for small tribal areas during the British period, were not taken note of. If the tribal people raised their voice against the new system, they were suppressed by giving their protest a wrong form. There are a number of examples of discontent on this account. The people have not accepted the new system fully even after 40 years of independence.

20.11 For example, the administration of the agency areas of Andhra Pradesh was entirely different. But, that administrative system after independence has got completely routinised. A very big reason of tribal discontent is its confrontation with the new system. Similarly, there were many rules and regulations in Bastar before independence concerning management of land and forests, control over government servants, regulation of wages of labourers etc. For 20 long years after independence, there was confrontation between the people and administration on the issue of land and forests which at a very superficial level was taken to be merely as a dispute about the rights of the ruler. This confrontation culminated in a big explosion of police firing, it subsided but discontent has continued. This discontent is now erupting in other forms.

#### Kolhan Movement in Bihar

20.12 It is necessary to make a special reference to the situation in Kolhan, Singhbhum in Bihar. In the beginning of the establishment of the Raj in this area there was a big rebellion. The British as a positive response accepted their traditional system. A special regulation was formulated accordingly, which is known as Wilkinson Rules. The Wilkinson rules are concerned only with some civil matters. But, there are a number

of other matters concerning the rights of Mundas and Mankais and the management of the area for which special provisions were made. The people describe this whole a special management system as Wilkinson rules. Thus, these rules in themselves have a rather limited scope, but have conventionally acquired a much wider connotation. It is in this broader context that the term 'Wilkinson Rules' is used. In this arrangement, Munda or the Village Chief and Manki or the Chief of a group of villages were recognised in this area. Under this system, these people used to settle all disputes of their village and area according to their custom but drawing their formal authority from these rules. This arrangement continued even after independence.

20.13 When the new scheme of panchayats was introduced in Bihar in the 70's the same system was also extended to the Kolhan area, disregarding their local system. Thus, alongwith the Munda and Manki structure, new Panchayats were also established. Thus a set of new panchas also came on the scene. Moreover, in this new phase, Wilkinson rules were totally ignored. Taking advantage of this situation, all State departments also spread out into this area as well like all other areas in the State. It now became necessary for the people to go to a Police Station even in those cases where earlier Munda and Manki used to settle disputes of the village in their own way. The Forest Department took over the management of the forests. In this way, the people of this area who had been managing their own affairs in their own way suddenly came under the authority of external institutions because of which they had to face many difficulties.

20.14 Being faced these problems the people of this area placed a demand before the government that their traditional system under the Wilkinson rules should be continued. There was no clarity at any level about this demand and the issue remain rather confused. There was so much misunderstanding between the government and the people on this issue that the leaders of the movement were declared as anti-nationals; some of them are still underground. Some three years back in '87 when the former Prime Minister visited this area, he was told about this problem. After seeing the situation for himself, he declared in a open meeting that the Wilkinson rules will be allowed to continue in that area. But, there has been no implementation of this declaration so far. The general law and the system of the state continues to be extended to Kolhan as usual, the leaders are still underground and there is tremendous discontent amongst the

people. In a way, there is a state of confrontation between the people and the government because of which neither the government system is functioning properly nor the people's own system. Many undesirable elements are taking advantage of this vacuum.

20.15 There is only one basic reason for this confrontation between the people and the government in Kolhan, that is, non-recognition of the local system in accordance with the spirit of Constitution. The most regrettable aspects of the situation is that their traditional system which had been continuing for many years even after independence was not only ignored but no attempt was made even to look at its formal legal aspects and that the new system was imposed without any thought. There has been no clarity on this issue even now notwithstanding the fact it is now known that there was a rebellion-like situation on account of the incongruous situation which has arisen because of the superimposition of the new system.

20.16 It is necessary to mention one thing here. Even though under the provision of the Constitution the traditional system can be allowed continue as it is without any change but it is not necessary that there should be no change, whatsoever. Similarly, if there are any basic defects in the traditional system, it is not necessary that it should be allowed to remain as it is and no attempt should be made to reform the same. But this change should not be superimposed, participation of the community in deciding about the nature of change is necessary. It is an important question which deserves serious thought at the highest level. I will like to give some experiences in this regard.

20.17 I had talked to the people about their traditional system during my visit to Kolhan last year (1989). The selection of Munda and Manki in Kolhan is done collectively in which all the people in the village participate. But, still the tradition of limiting the selection to the lineage is continuing. No one outside a particular lineage is become a Munda and Manki. But the question was whether the people even today will like to continue with that tradition of lineage? Even if some people may like to continue, will their own young people not demand their democratic rights under the influence of new ideas?

20.18 When a detailed discussion was held on this issue, the general consensus was that in their real tradition of olden days, the choice of Munda and Manki was not limited to any lineage. Any person of the

village, man or woman, could be elected to these positions. It was not even necessary that the person should have been a tribal. The custom of lineage in the selection of Mundas and Mankis started during the british period. It was in this phase, once the person became Munda or Manki, he became more powerful on account of his contact with the outside administration which included the real authority. Those persons who were selected by the people in initially on merit took advantage of this situation and established a right for their lineage on the positions held by them. In this way the traditional democratic system of Kolhan got transformed into lineage system. The people of Kolhan on their own, now will like to change this and revert to the practice of selecting any person of the village as Munda or a Manki on the basis of consensus rather than adhering to the custom of lineage.

20.19 It is clear from this example that it is not necessary that the people themselves may like to keep their old system unchanged. A living society tries to search new meaning even in their tradition in the light of new ideas. Sometimes a real basic change can be presented in the form of return to the tradition by giving a new interpretation to their history so that the people can accept it with confidence and ease. It is not necessary to undertake an indepth research in this case of Kolhan to find whether in the olden days they had an ideal democratic set up or not. If the people believe that they had an ideal democracy, that should be enough.

20.20 The most important thing which came out from the entire process is that when the people get an opportunity for making their own decisions about their system, then gradual change automatically takes place. They interpret their tradition in the new context; they establish new conventions while struggling with new situations; and they learn from their mistakes. This is the greatest strength of democratic institutions. The dissonance and the state of confrontation which are being created in many tribal areas can basically be traced to the fact that this natural process is not being allowed to operate. The confrontation in the case of Kolhan can be ended by implementing the Constitutional provisions in the right way. A set of regulations can be made under the Fifth Schedule of the Constitution which may be a beautiful amalgum of the people's traditions, the provisions of Wilkinson rules and democratic values.

### Traditional Institutions - Their Living Form

20.21 Eventhough the traditional institutions in the tribal areas have not been formally recognised and they have not been given any powers as well, yet in practice, even now they are managing all affairs of the community as usual and they are also quite powerful. There are many reasons for this. The experience of an ordinary tribal with the outside system has not been a very happy one. The government apparatus in these areas is a symbol of the authority of the State, it is not a shield for the people in consonance with its constitutional responsibility of the state. So far as the people are concerned, to them it is an instrument of exploitation and oppression. Therefore, whatever may be the law, the ordinary tribal will not like to go out of his village for settling personal dispute or the disputes of the village. He would prefer a solution within the traditional system. Similarly, the tribal does not want to deal with the administration unless there is some compulsion. On the other hand, the outsiders also do not go to these areas for doing something good to the people; they move in only under compulsion. Even when they reach there, the attitude is that of just completing the formality. But the irony is that undesirable elements on the other hand have penetrated deep into this area from whom the tribal wants to keep away.

20.22 Thus, so far as the administrative system is concerned there is a wide difference between the reality and the formal situation in the tribal areas. In view of the fact that the traditional institutions do not have any legal powers, their existence is not taken note of. Therefore those who do not have direct experience of the community life of the people feel as if their traditional institutions have all but disappeared. They conclude that there is no need to bother about them. The reality is entirely different. The tribal people do not want to have anything to do with the modern system unless there is something compelling. The traditional institutions themselves are performing all the functions as usual about their community life. The new system is really of no significance to them. Therefore, the traditional institutions are living institutions even now but they are somewhat weaker compared to the outside formal systems which are recognised under the law.

### Ineffective New Institutions

20.23 A change in this regard could have been expected after the establishment of new formal Panchayats in these areas eventhough the tribal people desired to keep away from the modern system in general. The

Panchayats are no doubt a part of the formal system yet their members are from amongst the people themselves; they cannot be considered to be different from the local community. Some change had also come about in some areas. But on the whole because of the new Panchayats there is no difference so far as the traditional panchayats in the tribal areas are concerned. There are many reasons for this. Firstly, the scope of work of the formal institutions is very limited. They have been entrusted only with a few items of development. The developmental programmes, firstly do not reach many of the tribal areas. Secondly, the new institutions have their own ways of functioning with which even the panchayats members are very familiar, let alone the ordinary tribal. Therefore the functions of the Panchayats are performed for all practical purposes by their secretaries. In this way, the panchayats in the tribal areas are tribal institutions only in their appearance; they are really under the control of non-tribals or local officers. These formal Panchayats function completely in isolation of the traditional system in the village. There is no relationship between the two.

20.24 There is one more thing. Once the election to a formal institution is over, people cannot exercise any pressure on them, nor is there any scope for significant interaction between them. The panchayats go on doing their work in a routine fashion in association with the concerned officials only. If person from the village feels that there is something wrong, he cannot do anything; he has no concern with it. Firstly, the people of the village generally do not have any right to say anything about the functioning of the Panchayat. Secondly, even if somebody raises a question, it can be explained by allusion to a law, a rule and by a mere statement that it is a wish to the government; it can also be just ignored. Therefore, the people lose interest in what the Panchayats may be doing.

#### Wrong Consequences of Unnatural Division

20.25 In this way the social matters and other matters concerning life in the tribal areas have been formally kept as two separate things. The social matters are exclusively the responsibility of traditional institutions. But all the matters concerning life are dealt by other people and other institutions. Such division may be alright for the modern society where the life itself is highly differentiated and neatly divided amongst different slots. The system tries to bring about necessary coherence amongst them. But, the life in the tribal areas is not as divided in different slots, it is one organic whole. Therefore, the separation of functions is not only unnatural, it is not in the interest of the tribal

society. It has had some serious consequences about which has not claimed much attention so far.

20.26 The system in the tribal areas is still a very simple one. The differences amongst the people mostly relate to social matters or minor disputes or religious customs, magic and such like. The influence of the modern society in their life as is rather negligible so far. Therefore, perceptions and the visions in the modern world do not have much significance in their ordinary life. And if some new things from the outside world reach them, they are ordinarily beyond their understanding. Moreover they are also outside the ambit of the authority of the traditional institutions. Therefore, traditional institutions are engrossed mostly in social and religious matters and manage them in accordance with their tradition. There is no opportunity for them to discuss new situations and challenged.

20.27 The issues relating to administration and the modern system reach traditional institutions only when the community as a whole or some members of the community face some troubles from the other side. These are crisis situations for them. Therefore the reactions are ad hoc, negative and even may assume an extremist form. Therefore, the irony is that there are no occasions in ordinary course which may bring the traditional institutions in touch with any of the positive aspects of modern world so that a new consciousness is engendered. On the other hand, the new formal institutions go on performing merely some routine functions in a very limited arena without much understanding. The traditional leaders either do not have any role in these new institutions or their participation is by way of a mere formality. Therefore, no dialogue gets established between the community and the new institutions.

#### The Ritualistic Hold on Traditional Institutions

20.28 In this situation, the influence of the traditional institutions on tribal communities continues. But, these institutions do not get any benefit of new ideas because of their near isolation from the outside world. The worst consequence of this artificial situation is that the hold of ritualis on the traditional institution becomes still more strong. There is no scope or possibility of new matters concerning the modern world coming an integral part of the role and responsibility of these institutions in future as well along which some new light could be expected to come. Therefore, as the things stand there is no hope for any change

in the functioning of the traditional institutions. This is the most regrettable aspect of the present day social life of the tribal people. It will be necessary to give one example in this regard.

20.29 In many tribal areas of our country there is a belief that illness is caused by magic and that magic is practiced mostly by women who are called as dayan, dakani, bhatti, etc. If in any village a large number of children suddenly fall ill and death toll is heavy or there is some grave sickness otherwise the village priest is called and asked to find out the reason. It is obvious that the priest start exploring to the scene according to his belief and traditional and then will identify magic as the reason for the death toll or illness. Once that is established the next step is to search for the sorcerer or the sorceress(dakani) as the case may be. Now, if the priest identifies a sorceress, then people believe it instantly. As soon as the person is identified as a sorcerer , the entire community gets outraged and revenge is sought to be taken. Sometimes he/she is persuaded to take back the magic. When dispute increases or the illness persists, that sorceress may even be killed. The illness has to end at some point or other. Therefore it gradually disappears in due course. But the people associate it with their punitive action and their faith in magic gets further reinforced.

20.30 A number of killings related to magic are reported from all the tribal areas in the country such as Thane and Khandesh in Maharashtra and Singhbhum in Bihar. The most regrettable aspect of this situation, which is also a cause of great concern is that many a time these killings are not related to tribal's belief in magic; but the basic reason is dispute about property. For example, some unscrupulous elements of the society may collude with the priest and get a widow or an old women declared as sorceress just to grab her land. This belief is so deep that even social workers hesitate to intervene. Some time there is a spate of such crimes in some areas as had happened in Singhbhum some years back. Hundred of helpless women were killed. Not much came to be known about these unfortunate events outside the forests of Kolhan. In this situation, even administration feels helpless to intervene.

#### The Raisabhas of Adilabad - A Confluence of the New and the old

20.31 The situation about blind faith will continue as--it is so long as the traditional institutions and new institutions function separately in isolation. Wherever new light reaches the traditional institutions

on any account whatsoever, change becomes a normal feature. This is in the very nature of social institutions. The experience of Adilabad is noteworthy in this regard. The Gond tribals of this district in the face of new challenges decided to strengthen their traditional institutions which gradually assumed new responsibilities and sought to deal with new situations emerging in the area. As I have discussed earlier, a special feature of the modern system is that deals with each person as an individual and ignores the community. All the laws and rules of the modern system are framed accordingly in which individual is taken as the basic unit. Therefore, all relations and contacts of the people with the modern system are in their individual capacity. The concerned person has to deal with the system as an individual in all cases and if the situation arises has to face the same all alone.

20.32 But the position in the tribal areas is different. Here the community is the basic unit of the tribal life. The individual has no identity if he is taken out of the community context. He feels weak and helpless as an individual. Therefore, whenever he has to deal with the modern system, he never ventures alone. Always a couple of people go out together, for who knows what difficulty he may have to face when and where?

20.33 The people of Adilabad recognised this weakness of theirs and also found out a solution. They decided that no person from a village in their area will go out to seek a solution of his problems. All the people in the village together will take up the problem of each individual in the village collectively. Similarly, if the government has to do anything with an individual in a village or if a government department decides to assist some people in the village through developmental programmes, all the people in the village will come together and consider all aspects of the situation, understand it thoroughly and will decide amongst themselves about the government department should be asked to proceed in the matter. In this way no member of a village community is alone, in their dealings with the outside system and outside people in any matter whatsoever. All the people deal with each issue only as a group comprising all the people of the village.

#### Old Institutions and New Contexts

20.34 According to the tradition of the Gond tribals of Adilabad, every village used to have a Raisabha. All the decisions in this assembly used to be taken on the basis of consensus or am rai. That is why this assembly

was known as Raisabha. A few Raisabhas together constitute a Rai Centre. All matters which cannot be settled at the village level are brought up before the Rai Centre in appeal. All the people of the village participate in Raisabha. Rai Centre comprises two members from each of the Raisabha. In the earlier days, Raisabha used to manage all the affairs of the community. But gradually in the new phase particularly after independence the scope of functions got circumscribed to socio-religious matters only. But, ever since the decision was taken to bring all issues before the Rai Sabhas, referred to above, the role of the Raisabha has become quite prominent. Now the Raisabha is responsible for taking up all matters of each individual in the village with the outside system and to take back to the concerned person whatever is sought to be communicated to him by the outside system. With these new responsibilities, the scope of deliberations in the Raisabhas has expanded. They are now dealing with practically all matters concerning life of the ordinary people as in the olden days. In this way, a basic change in their functioning has been initiated.

20.35 A very good effect of this change was that even matters concerning traditional social system and religion are getting influenced by the new light. I have referred to earlier the inhuman form that sorcery has assumed in some tribal areas. The Gonds of Adilabad district also generally believe in magic. But recently in one case of sorcery, the approach adopted by one Raisabha has proved to be of vital importance. As usual there was sudden eruption of disease in a village. The pujari was called. He identified a particular person as the sorcerer. This man somehow took courage and approached the Rai Centre and presented an appeal before them against the decision of the priest and all the people of that village. Here it is noteworthy that all members of Rai Centre as individuals believed in magic. But, in spite of that belief they heard the complaint and asked the concerned village people to substantiate their allegations against that person with concrete proof. The village people obviously could not give a proof. Therefore the allegation against the person had to be dropped. In this case the Rai Centre had to consider the issue three times and the matter ended only when they imposed a collective fine on the village as a whole.

20.36 This case is important because a new process started in the Rai Sabhas and Rai Centres on this vital issue of magic. While finally settling this case, it was also decided in the district-level Raisabha that in

any matter concerning magic no final decision should be taken at the village level. It must be brought to the Rai Centre and only there a final verdict can be given. In this way, a new convention got established according to which the decision of a priest against any person cannot be accepted as final. All people sitting together at the Rai Centre could deliberate on his decision and if necessary change it. In this way, the Rai Centre acquired authority over a matter which so far was outside the ambit of any rational process. Eventhough the belief in the magic still continues as earlier. But once a process starts in which a belief is obliged to be established on the basis of facts, no irrational system can continue for long. Simple questions based on facts and logic can be the most vital instruments of social change.

20.37 Another change in the traditional functioning of Raisabhas is also noteworthy. The unit of traditional institutions of the tribal people is usually the community and the village. The Raisabha of Adilabad at village level are General Assemblies of Gond tribals only. In many villages there are no other people except the Gond tribals. But in some villages people from outside have also settled. Therefore, the position of the mixed villages in respect of the Raisabhas is somewhat different. They do not represent the whole village. Keeping in view the new responsibilities which the Raisabhas are assuming a natural question about the system which should be adopted in the case of mixed villages came up for consideration in one of the recent meetings. It was decided that in these villages all the residents of the village should be included in the Raisabhas. Moreover, they also considered the question of participation of women in the panchayats of Raisabhas. The women used to attend the meetings of Raisabhas, but they could not become panchas. Now the people decided that in future the women will be given an equal place amongst the Panchas as well. In this way, suitable changes are being incorporated in the structure of Raisabhas in response to new situations and new ideas.

#### Wrong Reaction of the System

20.38 Thus, amongst the Gond tribals of Adilabad, the system of Raisabhas has now got re-established. This system has gradually become so powerful that there is a near complete check on wrong actions of all sorts of people connected with formal institutions and other vested interests. These people are apprehensive of growing influence of Raisabhas. But, it is regretted that the importance of these institutions has not been appreciated but, what is worse, they are being considered as competitors

of formal institutions. This is against the declared policy about the tribal system and also the Constitutional schema. The State Government has even issued an odd order in which the government officers have been asked not to participate in the meetings of Raisabhas.

20.39 What can be the nature of such instructions in the context of our Constitutional provisions? This is clear that in a democratic society the common man is basically the source of all forms of authority and power. All other institutions derive their authority ultimately from the common people. Therefore, the only meaning of government instructions to the officers not to attend the meetings of Raisabha can be that they should not keep in touch and communicate with the common man. This is wrong. Moreover, the traditional institutions in the tribal areas are basic. Disrespect to those institutions is disrespect to the Constitution itself. I hope that the State Government will reconsider this decision and will give full regard to those institutions.

#### Self-Management System in the Tribal Areas and Constitution

20.40 The most important reason for the neglect of the traditional institutions of the tribal people in different states and even the failure to establish formal institutions after independence specially keeping in view the specific situation in each area is that no attention has been paid to the constitutional provision made for the tribal area. Therefore, it is necessary that the importance of the Constitutional schema itself is clearly understood. I have referred to this issue in some detail in my previous report. Nevertheless since honouring the spirit of the Constitution is vital for the future of the tribal society, it will be necessary to discuss this question eventhough it may mean some repetition.

20.41 As we have seen earlier, there are two types of provisions for the tribal areas in our Constitution -- one under the Fifth Schedule and the other under the Sixth Schedule. The provisions of self-governance have been clearly-spelt out under the Sixth Schedule. The area of responsibility of the local institutions have been fully elaborated in the Schedule but no such elaborations have been done in the Fifth Schedule. In their case, it is the duty of the Governor to establish the system in accordance with the need of an area. The main reason for not spelling out details about self-governance in respect of the Fifth schedule area was the diversity of the situation therein. The

condition of the tribal areas in middle India is so different that, it was not possible to incorporate and adequately provide for in the Constitution the varied situations of each area with full detail. Secondly, if everything had been incorporated in Constitution, it would have come rigid with no scope for any change. Continuous change and adaptation in response to the situation is one of the great merits of a self-governing system. It has special significance in conditions which are likely to change very fast.

20.42 Even though there are no details about the self-governing system in the fifth schedule, one thing is clear. When the ideal of establishment of a republic like structures at the village level has been accepted in our Constitution for all areas, the same ideal is much more meaningful for the tribal areas where the system of self-governance is living tradition and is already in vogue. Therefore, it can be said that the intention of the Constitution is that the self-governing systems of the tribal areas should be continued and these areas should be given the necessary legal support according to the need in each case. But no action in accordance with this provision has been taken in any of the states. On the contrary, a dual system has been established everywhere without any thought, which is not in the interest of the tribal community and is against the spirit of our Constitution. It is the responsibility of the State Governments that they take necessary measures for establishing self-governing systems for the tribal people in accordance with their traditions.

#### Self Governing System - Experience in the North-East

20.43 The next question for consideration in this regard is the form of the self-governing system for the tribal people. The intention of the Constitution about the self-governing system in the tribal areas is clear from the specific provisions made for areas under the Sixth Schedule. Almost all the items concerning the day to day life of the common man have been entrusted under the Sixth Schedule to the local institution and have been kept outside the purview of state government and institutions. Therefore the Sixth Schedule provisions can be accepted as a model. The arrangements for the tribal areas under the Fifth Schedule should be made accordingly.

20.44 There can be varied views about the concept of self-governing system and its formal form. The situation in this regard cannot be said to have been made fully clear even in the Sixth Schedule. There is a

provision for local institutions at two levels in the Sixth Schedule - District Councils at the district level and Village Council at the village level. But in this Schedule, the jurisdiction of the District Council only have been clearly defined. It has two types of responsibilities. Firstly the District Council has been entrusted with the management of certain subjects enumerated in the Schedule and also for making laws and rules for those subjects according to the need. Secondly, no law of the Centre or the State concerning the matters included in the Sixth Schedule can be extended to the area under the jurisdiction of a District Council without its consent.

#### Weakness of the District Councils

20.45 The District Councils could not emerge in the form of strong political administrative institutions notwithstanding these constitutional provisions. This was largely because in the north-east gradually separate tribal-majority states were constituted one after another. These states adopted the same structure and style of administration as in other states of the country. Thus the new states had a structure and style to follow which were fully established, albeit, in accordance with the needs of those areas. But the District Councils had no experience go by about the functioning of the system at that level, nor did they themselves have a clear idea about the form it should be given. Therefore, they could not acquire a distinct identity of their own and they functioned as ordinary representative institutions. But, as representative institutions, the state governments proved to be much more effective and much more resourceful compared to District Councils. Therefore, in the presence of new state, the District Council did not have any significance.

20.46 There was a big fall out of this weakness of District Councils. Not many laws were enacted and rules framed in relation to the functions assigned to the District Councils under the constitution. Moreover, no institutions were established at their level for discharging those responsibilities nor were officials recruited for those purposes as otherwise would have ordinarily happened. On the other hand, the traditional institutions at the village level in these areas, the real institutions of the people, were living entities; they did not require bestowal of any power from outside. It was enough so far as they were concerned that there was no interference from outside. The District Councils could not interfere in the work of these village-level institutions because they themselves were not really well-settled. On the other hand, these

institutions at the village level were managing more or less the same items which are listed out in the Sixth Schedule; They continued to function as usual even after the formation of District Council. In these matters the Central and the State governments had no powers to make laws without consulting the District Councils. In this way, there was no interference from any quarters whatsoever - the Centre, the State or the District Council-in the functioning of the village community in the tribal areas covered under the Sixth Schedule in the north-east. These institutions of the village, or the Village Councils, have remained self-governing institutions in the true sense. They are carrying on their responsibilities for the items of work indicated in Sixth Schedule according to their wisdom and understanding. Their traditions are continuing as usual.

#### Self-Governing System - Tribal People's Perception

20.47 It is clear from this experience that the real form of self-governing institutions in the tribal areas can emerge only at the village level. If any system is established ignoring this fact, the same will not be a self-governing system in the real sense. The discontent in the tribal areas of middle India today is basically on account of the fact that their own sub-governing systems are breaking down and they have become dependant on external institutions even in relation to matters of their day-to-day life. Everywhere the tribal people are opposing this albeit in their own style. If one were to talk to the people in these areas about happenings after independence, their only reply is - "today we are dependant on others in every matter; the functioning of government officials is arbitrary and there is nobody to listen to them; they do not have any rights of their own." Every tribal has only one wish that no one should come to their area. They should lead their life according to their custom in their own melieu, sharing happiness and sorrow amongst their own kith and kin.

20.48 The life of the tribal people is linked with forests and land. Therefore, they wish that if they cannot be given full control over forests atleast whatever the government does with regard to the forests should be done in their consultation. The confrontation between the tribal people and the government in Bastar district of Madhya Pradesh after independence started only on matters concerning forests and land. Even today everywhere discussion centres round forests, be it, Adilabad in Andhra Pradesh, South Bastar in Madhya Pradesh, Garhchiroli and Nasik in Maharashtra or Singhbhum in Bihar. The confrontation is also on the same issue.

20.49 The people in many tribal areas participated in the freedom struggle with great enthusiasm. The subjugation in the life of tribal meant only restrictions on forests and alienation of land. For them the freedom struggle was a struggle for their command over forests and land. It is stated that when freedom came the tribals in many areas, who had been leaders in the freedom struggle, could not understand as to which freedom had dawned. Nothing had changed concerning forests and land. The government's control continued as earlier. It is said that some tribal elders became mad. They ran into forests in a state of wild emotional frenzy shouting. 'These forests are ours,....., These forests are ours,....' Even today this is how the ordinary tribal feels about the government and independence.

20.50 All types of movements in the tribal areas are linked with forests, land and displacement. In any tribal area, the tribals can be easily brought together on any of these three issues. The truth is that it is not necessary to give a call for attending a meeting or gathering on these issues. If the people even come to know from some distant source that somewhere some talk is going on about these issues they reach their own, running in the hope that perhaps someone may listen to them. If the tribal gets some sort of assurance from anyone about forests and land, he instantly follows him, whatever may be the colour of the flag in his hand.

20.51 But, the average tribal in this matter is in a way being deceived. Today all movements start with the issues of forests and land and sometimes displacement. But these important issues gradually recede into background and some other objectives acquire primacy. For example, it could be the immediate objective of establishing a new state or the long march for effecting basic change in the society as a whole. In this tumult, the issues which the tribal considers as real ones, are lost somewhere.

20.52 Establishment of a new state or an authority at the district or regional level is no doubt one aspect of self-governing system. They can also have some significance in their own right. For example, political and other ambitions of the middle classes can be fulfilled through these institutions. But so far as questions of the life of the ordinary tribal people is concerned or the matters about which they are deeply concerned, these institutions do not provide the desired answers. There has been no change in the formal structure in the north-east after the formation of tribal majority-state. The fact is that at this time there is a state of confrontation between the formal state structure and the traditional system at the village level in the tribal areas of the north-east. Even-though the village level traditional institutions have no formal recognition, yet they are continuing on the basis of social recognition and prestige.

20.53 In this way it is clear that the traditional system in the tribal areas is the real self-governing system. The ordinary tribal is also interested only in these institutions. It is at that level he is in confrontation with the new system. There are small things of small communities at the village level which every person knows, understands and about which he can take decisions according to his understanding. It is only within the ambit of such a self-governing system that he can lead a life with dignity. This is the spirit of the Constitution and this is also what the tribal aspires for.

#### Constitution Amendment Bill and the Tribal Areas

20.54 Thus the self-governing system in the tribal area can be established in its true sense only on the foundations of their traditional institutions. An important initiative was taken in this matter in the provisions proposed for the Constitutional amendment (1989). It was envisaged in the Constitution Amendment Bill, that the proposed system will not be extended to the tribal areas in the same form. Instead, the Governor was authorised to extend the same to the tribal areas covered under the Fifth Schedule after making such changes as may be considered necessary. Similarly, the Legislative Assemblies of the tribal states of the North-east were to have the authority to make suitable changes.

20.55 The Governor already has the necessary powers under the normal provisions of the Fifth Schedule. Therefore even if the proposed provision was not made in this Bill, the Governor could have made suitable changes even with regard to the Constitutional provisions and extended them to the Scheduled areas in a modified form. But there is a special signi-

ficance of making such a provision in the Bill itself. In this case, the Parliament itself, while considering the issue of local institutions accepted in principle that there may be a need for creating a separate system for the tribal areas. This was perhaps the first bill after Independence, in which it was stated in a proposed law itself that it will not be extended to the tribal areas as it was and suitable changes could be made before extending the same.

20.56 I hope that whenever a law is proposed for establishing self-governing institutions of Panchayati Raj in the State or the Centre, it will be kept in view that the situation in the tribal areas is different, their self-governing systems are still in existence and that the life of the tribal people is not divided into separate slots. Therefore, I will further urge that no attempt should be made to superimpose a common system on the tribal areas as well as has been happening so far and the new system should be established on the foundations of their tradition system in all the areas - small and big - in consonance with the custom of the tribal people in that area.

#### The Form of Self-Governing System - People's Reaction

20.57 The question of self-governance is being raised in many areas by the tribal people through their movements. But there is also considerable discussion about the form of the new system. I have personally discussed this question with the people in many tribal areas of Madhya Pradesh, Bihar, Uttar Pradesh, Maharashtra, Andhra Pradesh and Rajasthan. There was a detailed discussion on this issue in the Conference of Tribal Panch held in Delhi (1989). Eventhough the situation in different areas is quite different, there was consensus on some important issues which are given below.

#### Gram Panchayat and Village Community

20.58 In all these discussions one thing which clearly emerged is that the experience of the tribal people about the formal panchayats so far has not been a happy one. There are many reasons for this. Firstly, a formal Panchayat acquires a distinctive identity of its own, because of which the common man is not able to accept it at his institution. Such panchayats are constituted under the law and function according to the law. The people, no doubt, elect the members, but after the election, the people have no hold over them. In fact there may be no dialogue between them. Moreover,

the formal panchayats acquire their own interests which can be different or even against the interests of the common man or the village community. There are numerous cases of confrontations between gram panchayat and village community on the issue of rights over resources like the village tanks. The panchayats try to augment their income by sale through auction of the right to fish in the tank and to that end they ignore the rights of the village people and even their feelings. In this way the new panchayats appear to the people as if they are a part of government establishment. Therefore, such a panchayat can be an institution of the Sarpanch, it can be an institution of the Secretary, but the people are not able to consider it as their institution.

20.59 We have seen earlier that the distribution of functions between the traditional panchayats and the formal panchayats is artificial and is not in the interest of the tribal society. Therefore, the major question is that how this artificial division should be done away with. The tribal people desire to have their traditional system. Their traditional institutions are concerned with every sphere of their life. But formal institutions by their very nature have their own limitations. They can and do undertake only those functions which may have been assigned to them by the law. Therefore the scope of the role of such institutions is bound to be limited; it cannot be comprehensive. In the present situation of the tribal areas, these institutions in fact do not have much to do with the ordinary life of the common man. On the other hand, there is a wrong perception about the traditional panchayats. Since there is no mention about the traditional panchayats in the law or the formal record, they do not have any formally assigned role. Therefore, there is an outward impression as if nothing exist there. Consequently those policy makers, who do not have direct experience of the life in the tribal areas, proceed on the premise that the traditional institutions, if they exist at all, are weak or are almost dead. In the absence of correct information a suggestion is also sometimes made for assigning all responsibilities-new and old-to the formal institutions.

20.60 Any attempt to entrust the responsibility in relation to the day-to-day life of the people to formal institution cannot succeed. The seeds of failure are present in the nature of the suggestion itself. The traditional system of the tribal people is like a very big vessel which contains everything concerning their life, leaving nothing whatsoever outside it. In comparison the formal institutions are like a very small vessel which can contain only those elements which the government may like to entrust them. In this situation the idea of giving the formal institutions full

responsibility would be like making an attempt to put a large vessel in a smaller one, in which case both are bound to get broken. The wisdom demands that the smaller vessel should be put inside the bigger one which will serve the interests of all concerned.

20.61 Thus there is only one alternative. The traditional institutions of the tribal society should be entrusted the new tasks. Only in this situation can all functions concerning the life of the people be attended to satisfactorily. In this case the traditional institutions will get the benefit of new ideas. They will adapt themselves in accordance with the emerging needs of the society. Moreover, the new system will not remain an unknown world to the tribal people. It will become a part of their own system on which they can have full control and which they will be in a position to direct. In this way, the present alienation between the people and formal institutions will end. The tribal will not feel that he is helpless. And he will be able to enjoy a new life, which he himself will be able to guide and direct.

#### Scope of Self-Governing System

20.62 It will be appropriate to keep in view the spirit of the Constitution while deciding about the scope of the self-governing system for the tribal areas. The objective of the Constitutional Schema is that tribal society should be enabled to become a partner in the new socio-economic system with dignity, and on terms of equality, preserving the best elements of its tradition and maintaining its own identity. It is clear that in the present system this spirit has not only been ignored knowingly or unknowingly but has been openly disregarded. Any system, which claims to honour this spirit, must be built on three main pillars - first, abrogation of the 'criminalisation' of the tribal community and restoration of their right to manage their own affairs. Second, restoration of the right of the community over natural resources including land. Third, entrusting all functions, relating to planning and implementation of economic development programmes and social services and direction of all related institutions.

20.63 The functions assigned under the Sixth Schedule to District Councils should appropriately be entrusted to the village community at that level. However it will be necessary to make them somewhat clearer. For example, education and health services at the level of village and pargana may be looked after by the village Council and Pargana Council respectively. In this way, the self-governing system at the village level should be responsible broadly for all items concerning the day-to-day life of the people

which, in particular, should include the following:

- (i) Maintenance of law and order;
- (ii) Regulation of mutual relations of all types amongst the people in village and social customs, particularly those relating to use of intoxicants etc.;
- (iii) Adjudication of all types of social matters, disputes about property and penal cases not involving imprisonment of 5 years or more;
- (iv) Planning and implementation, and direction of all related institutions, concerning education, health, child welfare, care of the aged and all other social services;
- (v) Planning and implementation, and direction of related institutions, concerning all development programmes at the village level;
- (vi) Establishment of village bank and operation of the entire credit system keeping in view their own tradition and needs of the people;
- (vii) Establishment and operation of village fund.

20.64 In all these matters the responsibility at the pargana level should be entrusted to Pargana Panchayat. The decision of Pargana Panchayat should be accepted as final. All government officials at the village and the pargana level should work directly under the supervision of the Village Pargana Panchayat.

20.65 There is yet another important thing which will have to be kept in view about the scope of self-governing system which is vital for its functioning. Whatever responsibility is entrusted to these institutions must be entrusted in full without any qualifications. There should be no scope whatsoever of interference by outside institutions or administrative officials. The experience so far indicates that a provision of even a small, as little as one per cent, interference from outside can fully nullify the 99 percent powers given to the institutions. Delegation of 99 percent can become nearly zero delegation. Unless the people have the

realisation that the entire responsibility of the task assigned to them is theirs, the requisite sense of responsibility will not get engendered. Moreover in that situation, besides the normal consequences which can be expected to follow due to outside interference, it is not possible to check the tendency on the part of these institutions to wash their hands of their responsibility by putting the blame on others for may be due to their own shortfall. Realisation of full responsibility is essential for a sense of responsibility. And it is only in that situation that an individual or an institution can learn from its own mistakes.

### Financial Arrangements

20.66 There are two facets of financial arrangements. The first concerns the provision of financial resources for discharging the responsibilities assigned to these institutions. The second, concerns their responsibility for providing economic assistance and credit facilities to the members of the community. It is crucial for the self-respect of a community that the community is not dependent for any purpose whatsoever on the grace of any other institution or individual. There is only one reason for the unnecessary and unwanted extension of the state apparatus even to the Sixth schedule tribal areas in complete disregard of the role and the responsibilities of the local community. And that is the lack of obligatory financial provision in keeping with the responsibilities assigned to the District /Village Councils. Consequently the state governments have created separate institutions and structures of their own for providing social services and undertaking developmental activities which otherwise should have been done by the District/Village Councils. This anomalous situation must end. It is a must if a self-governing system is to be established in accordance with the spirit of the Constitution that full state support should be provided to the Village/Pargana Councils for discharging the functions assigned to them. This is the responsibility of the state under the Constitution.

20.67 So far as the question of financial assistance to individual members of the community is concerned, full responsibility should rest with the Village/Pargana Councils. The provision of assistance in the form of grants is against our national values, particularly the tribal tradition. It is detrimental to the sense of dignity and self-respect. If the labour of a people is fully utilised and is utilised on such works which enrich the natural resources and also improve and create productive resources in the village/pargana, there will be no need for dole assistance. Similarly, the basic principles of the credit system should be the provision of loan

at the time of need and fixation of its repayment schedule according to the specific situation of each individual. The tribal community has been discharging these responsibilities so far and can continue to discharge them satisfactorily even in the changing situation. The working capital of the Village Bank should be provided by the Reserve Bank in the form of a permanent advance carrying no interest whose full account should be kept in the village level. Only such a credit system can enable the community at the village to become a self-governing system in the real sense in relation to the economic life of the people.

### The Form of New Structure

#### (i) One Habitation, one Panchayat

20.68 There are some aspects of the tribal tradition which will have to be kept in view while deciding about the structure of the self-governing institutions. In the formal panchayat system, a revenue village, or more than one such villages depending on the size of the population, may be taken as the basic unit. The revenue village is not a basic social unit in the tribal areas. It can comprise a number of hamlets which may be anywhere between two to even fifty. These habitations are also the social units in the traditional structure. Therefore, if the structure of the new system has to be created on the foundations of the local social system, the basic unit will have to be the habitation and not the village. One habitation one Panchayat should be the rule for the new system in the tribal areas.

#### (ii) Pargana Panchayat for Appeal

20.69 When certain issues cannot be settled at the village level they are referred according to the tribal tradition to a panchayat at the next level comprising a group of villages which are known as Pargana, Parha, etc. A Pargana may comprise 8 to 10 habitations. The decision at the Pargana level is generally final. One important feature of the pargana-level is that the people of the pargana may not know each other directly, but they are aware about the reputation of the people in the area through word of mouth. The people also come in contact with one-another during festivals and other special occasions. In this way, the decisions at pargana level are based on the personal understanding and knowledge of the people. It is possible to make a distinction between right and wrong. Formality cannot dominate decision making. In this way, the organisation of self-governing institutions in accordance with the tribal tradition has to be at two levels - one at the level of their community, i.e., the habitation and another at the level of a group of villages or the pargana.

### Panchayat to be Answerable to Village Council

20.70 Another special feature of the tribal system is that the source of all forms of authorities is the village community. That is why its decision is final. This is also the essence of a democratic system. This basic aspect has been missed in the panchayati raj system of our country. And that is also the most important reason for its weakness. Instead of direct participation of the people in managing the affairs of the village, that responsibility is entrusted to the Village Panchayat. In this way even at the village level representative system is established. After the panchas are elected, the village community has no control over the Panchayat. There is a provision in the laws of some states for full Gram Sabha meeting once or twice, in a year but the Gram Sabha has no special powers. The election to panchayats is usually held once in five years. There is no provision for making any change whatsoever in the intervening period. And even if there are some provisions, they are too complex to be effective. It is sometimes suggested that the provision for recall of representative may help in putting a check on them. But, any such process is bound to follow some rules and involve a number of formalities. The biggest drawback of any formalisation in the context of simple village society is that even though they may get the right formally yet that will only be in name, their natural right to take the final decision somehow vanishes and the people, who understand the ways of the formal system become all powerful in the decision-making process. Thus the reality at the moment is that after election, the panchayat becomes its own master for five years, no one can shake them.

20.71 There is only one remedy against the authoritarian ways of a representative system. The representatives must be made answerable to the Gram Sabha. This is also the tradition of the tribal society. The tribal people want to maintain this tradition. Therefore, atleast in the tribal areas, full powers in the new self-governing system should be given in accordance with their tradition to the village community and not to the elected panchayats. In principle, the status of the Village Panchayat in the village should be that of a committee which may be assigned specific tasks by the Gram Sabha to be executed on their behalf under their direction. In that situation, the Panchayat will act on behalf of the village community only until the community so desires. The day, the Panchayat or any member of the Panchayat loses the confidence of the village community, he should move out like a gentleman after returning to the community the responsibilities which may have been assigned to him by the community. The village community can make fresh nomination in his place.

20.72 Broadly, the relation between the community and panchayat-in the village should be the same as between the Parliament and the government. The members of Parliament are elected for five years but there is no such time frame for the government. A government can continue only till such time as it enjoys the confidence of the Parliament. But there is one basic difference between the Parliament and the Gram Sabha. A representative structure like that of Parliament is necessary at the national level for obvious reasons. But Gram Sabha is not an institution in the formal sense, it is a self-created entity. The true spirit of the democratic system can be said to be honoured only in those village systems which envisage direct participation of the people in all its functions. Therefore, there should be no question of election at village level. The Gram Sabha may nominate the Gram Panchayat and so long as the members of Panchayat continue to do their work well and so long as the Gram Sabha has faith in them, they should continue to work.

#### Method of Working

20.73 The method of working of a system is crucial for the self-governing system to continue to be a self-governing system in the real sense of the term. The source of real power of the people in essence comprised full and correct information, right understanding and a clear realisation of the fact that the final decision is theirs and no one is above them. The experience of the traditional institutions in this regard is valuable and it will be necessary to continue with that tradition in future as well with suitable changes wherever necessary.

#### (i) Open Proceedings

20.74 All proceedings in the traditional system are open; nothing is secret there. One salutary effect of this practice is that truth cannot be ignored and untruth cannot be covered. Therefore the proceedings of the Gram Sabha as also of the Panchayat in the new system should be entirely in the open. The ordinary people in this case will be able to know what is happening in the panchayat and what is said and done by each Panch. It will however be necessary that the non-members should only observe the proceedings of Panchayat and should not interfere in it. They can say whatever they like in the meetings of the Gram Sabha and even ask for explanation from the panchas. In this way the management system of the village will be fully responsible to the people of the village.

(ii) Consensus as the Basis of Action

20.75 Another important question about the functioning of the system is the method of decision-making. The democratic system today unfortunately has become a game of 51 : 49. In fact 51 or the majority behaves as if it comprises 100, or it considers that whatever may be its view, that is right. The most valuable heritage of our country is that in the traditional style of functioning at the level of the community there is no consideration of majority and minority. The disagreement of a single person is given full regard. Consensus is the essence of our tradition. This is a living tradition in the tribal areas even today.

20.76 Whenever I raised the question about the style of functioning of the village community, the spontaneous reaction of the people invariably was that 'there should be no vote in the functioning of the village institution, we do not want vote'. According to them, vote breaks the community, consensus binds the society.' No one in any of the tribal areas throughout the country even by mistake raised any doubt whatsoever about the possible problems which may arise in the functioning of the village institutions on the basis of consensus. They simply said 'if it is not possible to arrive at consensus today, we will sit tomorrow or may talk about it the day after; after all it is our community, wherever there are four persons each one may have his own ideas, he will express them differences of opinions are there; but, we will sort them out mutually amongst ourselves'.

20.77 This belief about working through consensus cannot be understood by those people who have never been a part of a community, by those who are used to looking at everything not only from the point of view of the individual but from the point of view of pure and simple self-interest. It is regretted that the policy-makers, who are unable to see this weakness of theirs, instead comment about the wisdom and style of the people and even try to find holes therein in the name of principles. 'Vote breaks, consensus binds' is the experience of the ordinary people, particularly the tribal people. This must be honoured.

Check on the Use of Money and Power

20.78 In the end we will discuss the lack of enthusiasm or even direct opposition of the people towards the formal panchayat system. The basic reason for this is the continuing decline of social values which the ordinary people are greatly resenting and are not able to accept. The valueless conduct is a matter of greatest concern amongst the tribal people. The politics of power is, to a large extent, responsible for the present milieu

of valueless behaviour. Everything is considered fair in the power game. The tribal people are disturbed by what is being done in the name of vote. They are gradually worried whether their society will be able to successfully pass through this new challenge.

20.79 There can be two reasons for the unwholesome competition for positions in any system - (i) Lack of any check on the conduct of the representatives after they assume office; and (ii) Confidence about continuing in the position for the stipulated period. As we have seen earlier both these elements are present in the present panchayati system. Therefore, if this panchayati system continues as it is and elections are held, wrong methods will be adopted like other areas, even in the tribal areas tomorrow, if not today, for capturing positions in the system. When the stakes are for getting a position for five years, which is not subject to any check the use of money and force for that purpose is possible. But, if there is a constant supervision by the village community on the functioning of panchayats in accordance with the tradition of tribal people and the village panchayat can continue only till such time as it enjoys the confidence of the village community, the use of money and force for election as a panch will have no meaning; it will have no use either.

20.80 There is one more thing. When elections are held once in five years, it is possible to use money and force once in five years. But, if the question of confidence of the community in the Panchayat can be raised at any time, in any meeting, it is unconceivable that money and force can be used every time. And it is not possible to cover wrong things in an open village forum. In such meetings it will not be possible to stop everyone from speaking. Someone or the other will come forward for telling even a bitter truth, howsoever powerful may be the adversary.

20.81 The most important thing for promoting democratic values is to create people's power. People's power cannot be created anywhere outside the people's own forum. If a repressive system in the village has to be uprooted, it is the people themselves who will have to take the initiative, it is they who will have to muster courage to accomplish the task. There is no other alternative. Social change is not a simple process. It is not possible to adopt short cuts for that great task. It is necessary to move on the high way of struggle, this is also the desirable alternative; and the most important thing is that this is also feasible in the tribal society.

Reaction of the Tribal People towards the System/

20.82 In this way it is clear that the state governments so far have not only ignored the traditional self-governing systems in the tribal areas which are still functioning, but they have also superimposed exotic formal systems on these areas without much thought. The exotic system comprises two parts viz., the government apparatus and new panchayats. There is undue pressure on all aspects of the life of an ordinary tribal from the side of government apparatus, because of which he is in real trouble. The new panchayats in these areas are only in name. They have not much concern with the major issues of tribal life. On the other hand, nobody in the government or outside is concerned about the traditional system of the tribal people.

20.83 In this way the situation in the tribal areas has got highly distorted. There is great discontent amongst the people against the system. The tribal people everywhere in some way or the other yearn to return to their old system in which there were no external pressures. For example, there are ~~movements~~ in Chhotanagpur for reintroduction of the old system of Munda - Khutkati. On the same issue there is direct confrontation between the government and the Ho people in Singhbhum. In Adilabad of Andhra Pradesh, there is a great divide between the traditional institutions and the administration which largely because of lack of understanding on the part of the government. This situation is detrimental for the people as well as the government.

20.84 Moreover people in many other areas have been agitating on a numerous simple issues but to no avail. Now the people are coming to realise very clearly that the only way to resolve those issues will be through the system of self-management. The tribal people in Garhchiroli have raised the basic issue of managing their own social system beginning with prohibition; they consider this step as the first stage in the establishment of self-managing system. Similarly, in many other areas like Bastar, Jhabua, Chota Nagpur, Nasik, Garhchiroli, a number of movements had been started on the issue of forests. The people in these areas are now coming to realise that the questions about forests will not be resolved without resolving the larger issue of the right the community over resources. Therefore, the objective of these movements has become broader. They are claiming the right of their community over the resources in the area. But the question of right over resources will also remain incomplete unless the community has the full right of managing their entire socio-economic system. The people are now increasingly subscribing to the view that

unless the entire management of the view that unless the entire management of the village is in their hands, they will not be able to live with peace. Therefore, the issue of 'our government in our village' (mava nati mava sarkar) is coming to the fore in all these movements.

20.85 A movement has been launched in Sonbhadra district of Uttar Pradesh with focus on the problems arising from settlement operation particularly the utter disregard in those proceedings for the rights of the people over forests and lands. The people are now realising that unless the management of the resources of the village is with the people, the settlement operation, which is only a small though important part of the larger issue, the situation cannot improve. Similarly, wherever major projects are being established and the people are being rendered homeless and resourceless, the people are staking their claims over the resources, the system and their right to life; they are engaged in struggles for achieving their goal. The biggest struggle in this regard is that in the Narmada Valley.

20.86 These movements in the tribal areas are assuming numerous forms. In some areas there is extremist/Naxalite wave. Since the extremist way gives them the hope of immediate relief, it has a special appeal to the tribal people. It is possible that the people may be in for trouble tomorrow, but the bigger question which they face compared to what might happen tomorrow, concerns the present - these questions concern their dignity, their livelihood and the oppression. Even otherwise, the tribal lives in the present, he does not care about the 'morrow; in fact he does not bother about the future. The consequences of the extremist way can be horrible, he is not unaware about them. But he coolly retreats into his present with the comfortable thought of 'let us see when the situation arises'.

## THE SYSTEM, THE CONSTITUTION AND THE COMMON MAN

### Change, Development and System - in the Eyes of the People

We have tried to present in this Report the flow of development and change in our country from the perspective of the people. It is the ordinary people, who comprise the real foundation for all causes, all Processes and in the end of all objectives. Every thing begins there and every thing also ends there. Therefore, the correct context of every system can only be the people's will and the peoples well-being. If there is any dissonance in this it will be necessary to search for its reasons in the system, any change for correcting it will have to be affected in this system and a satisfactory milieu have to be created in consonance with the people's will.

21.2 The basis of the dignity of an individual and the prestige of the community can only be the regard for their tradition to manage their system according their understanding, the simple acceptance of their right to make a living from natural resources, the right over means of production and, in the end, the entitlement for the fruits of one's own labour. When we consider all these aspects from the side of the people, the present situation in our country appears to be very unsatisfactory. The main reason for this is that either the basic questions have been ignored altogether or there are wrong beliefs about them. Secondly, in all these matters not only there are many short coming at the operational level but a variety of distortions are allowed knowingly.

### Creation of an Inconsistent System Disregard of the Right of Life

21.3 The creation of the new system in our country is being attempted for the above on the basis of certain formal propositions. So far only a small number of people have become a part of this system. But there is an atmosphere of hope all around. The common belief is that gradually more and more people will join the new system and, in the end, every citizen in the country will be able to get an equitable place in it. This can be an ideal. But in the

context of the present situation in our country, this is neither practical nor possible. This is not all. The present processes are entirely in the opposite direction. Their experienced reality for the bulk of the people is dreadful.

21.4 The formal system or only a handful persons have acquired almost exclusive control over all natural resources including land, forest and water. This tendency of centralisation is gradually becoming increasingly stronger because centralisation has been accepted as the natural process of development which is desirable and justifiable. The result is that there is no scope even for thinking about the possibility of those people, who have been making a living from those resources, for being allowed to continue to use them for making living in the same way, let alone the question of their rights. In this way the process of denial of the rights of the community over resources which was started during the British Raj, has been continued unabated. Those hundreds of millions of people, whom were rendered resourceless because of social inequity earlier, now have become resourceless and helpless under the sway of the modern system itself. That is not all. The entire communities, particularly in the tribal areas, have got 'criminally', are continue to get 'criminally' simply there are basic differences between the ways of the new and the traditional system which the farmer refuses even to acknowledge. They are helpless and protectionless before that powerful system.

#### Means of Production

21.5 If we look at the question of means of production, the situation is still worse. The principle of the land to the tiller has no doubt been accepted, but the bulk of the land still continues in the hands of a few persons. These people were rather disturbed for sometime after independence, but they were able to readjust within a short time and have reestablished their command over the lands, fully adapting themselves to the ways of the new system. Moreover, the discussions about the rights of tiller have been protracted so long that it appears that even the very idea of those rights will soon disappear. The basis of rights is government record. And the new masters of the system have full control over this record. Therefore, the situation has become so bad that one gets an impression as if the rights of the ordinary people simply do not exist. In some areas, there is a state of near lawlessness. Today, it is not possible for an ordinary person to establish the fact that he is

cultivating the land. And the law of the land does not consider it as something necessary. Therefore, it is just a matter of luck if someone somewhere brushes him out. In this process, the system behaves as if it is really not concerned. In fact in the eyes of the system, his very existence is not real. The absentee landlordism is no longer an exception, it is fast becoming a rule. Similarly nothing can be said about the rights of the other workers, except those in the organised sector, over the means of production and no one seems to be concerned about it.

### Entitlement of Labour

21.6 And in the end so far as the due entitlement of the workers for their labour is concerned, less said the better. The whole system is being run on the premise as if there are no entitlements of any kind of the majority of the people of the country. The majority of the people are obliged to subsist on whatever is left. Out of the gross national product after the members to organised sector have deducted at source arbitrarily what they consider as their shares. Our system is operating on the basis of a deep conspiracy according to which the bulk of the people are obliged to put in maximum work in exchange for as bare a minimum as possible. And as soon as the utility of a worker in terms of input-output as a biological unit is over, he must move out of the scene after providing ofcourse a "substitute".

### The Basic Reason for Dissonance

21.7 After all how have we reached this stage? This question has not been considered in depth on the basis of a clear analysis of the system with reference to the perceptions of the people. The problems of the common man are sought to be views in the shadow of the system itself. Consequently the question of any attention being drawn to the distortions of the system, which is the basic reason for that situation, simply does arise. The culprit is being searched everywhere. But those who are commanding the system simply have not tried to look at the system they command or look into the mirror lest they see their own shadow. Or, should we say that they have not been able to muster enough courage for doing so.

21.8 One thing is clear from our discussion, particularly about the tribal areas, that the spirit of the Constitution has continued to be violated by the state's own actions. And in some cases, injustice is so clear that one wonders that if we as a nation are wedded to just social order, then how at all this is happening. In my view, the biggest obstacle is that of the perception. But such a totally incongruous situation can not be understood by mere difference in perceptions. The system today is able to ignore every anomaly under the cover of rules and laws. In this way big mountains are hidden behind small straws. If these anomalies have to be seen in their true form, it will be necessary to remove those straws and view them directly without anything in between.

#### Dissonance between the Constitution and the law

21.9 The legal warp and weft of our system comprises these invisible straws. This warp and weft was generally prepared during British period. The foundation of our present legal structure were laid after the first freedom struggle by the British as a part of his attempt to make their suzerainty absolute. The basic premises of this system were taken from the premises of their own society and their own country and their objective was simply to strengthen the pillars of their Empire. In this way, this system was the model of a formal imperial system nurtured in western values. We fought the freedom struggle, created a Constitutional system based on the principles cleared in that struggle and values nurtured in our tradition. But the System on which the crown of our Constitution was placed, was wholly dissonant with its basic spirit.

21.10 The possibility of such a dissonance was kept while framing the Constitution. The President empowered to remove the anomalies of the structure. But today when we look back, it is clear that this task was not undertaken. It appears that the elite classes developed a liking for that system. Therefore, they did not even consider it necessary to remove these anomalies. In this way, today there is a wide gulf between a Constitution which permeated with the ideals of equity, justice and fraternity and the colonial apparatus which it commands. So far as the tribal areas are concerned, the Constitution contains seeds of almost revolutionary changes so that the formal system could be fully adapted to the needs of the simple societies with simple traditions. But the flow of events, however, ran parallel to the stream of formal frame and these provisions in the Constitution have remained mere expressions of wishes and aspirations.

21.11 In this context when we review the present situation, we find that the law concerning almost every aspect of life of the common man is against the spirit of the Constitution. Otherwise, on the basis of which form of equity could that simple tribal, who is completely unaware about the present situation, have been expelled from his ancient home and proclaimed an offender? Or else, how was it possible that the person who is actually cultivating the land cannot get even the fact of his cultivation entered in the government record? How is it permissible under the law and how the very existence of such cultivators of land could be negated? Otherwise, how was it possible that there could be an arrangement about snatching away the basis of the life of the people by giving a "few pieces of paper" and when a person was not prepared to move out from there, the State could continue to use force against those helpless people, the responsibility of whose protection has been entrusted to them by the Constitution itself?

#### Acceptance of Mistakes--The First Condition of a Satisfactory Solution

21.12 A pre-condition for removing this basic anomaly in our national life is to bridge the big gulf between law and our Constitution. The review of every aspect of life of the common man makes it clear that the law as it stands today is violating his basic rights. The rules made under the law are further reinforcing that anomaly. Will that State, which so far knowingly or unknowingly, has not only been adopted the legal frame as it is but has also consciously been considering it as justified, equitable and supportive of human rights, accept the bitter truth that this belief was an illusion? Unfortunately this is not an ordinary illusion, it is an illusion which has been consciously created, it involves vested interests of those persons who are deriving their sustenance of the system. All the laws concerning natural resources, means of production and entitlement of labour are clearly against the spirit of the Constitution. These include the forest laws, land laws and labour laws. They are clearly unconstitutional and they negate the right of the common man.

21.13 Similarly the Land Acquisition Act is being used as an instrument for the transformation of their traditional agriculture-based economic system into a modern system in our country. In that process, it takes away the natural resources from those who comprise the bulk of the poor people and for whom the constitute converts them into a variety of the new basis of their life raw materials for the use of the new system. It is clear from our discussion that in all cases of land acquisition by the state even this law itself is being violated. But this law, in its turn is not in consonance with the basic premises

of our national life and also of our Constitution. The basic right of a person in the society is the right to life, which is also enshrined in our Constitution. But this right to life has been ignored in this law concerning acquisition of resources. In this way, the entire process based on the present law in the name of development is illegal and unconstitutional. In the end, the identity of the community, particularly amongst the tribal people, is the very foundation of their existence. An average tribal is helpless and hapless outside the community. In the process of structural change, the problems relating to the identity of the tribal communities is not being even realised at any level. Therefore, displacement of the tribal people without their consent is against human rights.

21.14 The worst impact of the development processess which are illegal, unconstitutional and against human rights, falls on those simple tribal people and members of the Scheduled Castes, oppressed for ages, the responsibility for whose protection has been entrusted to the State. The irony is that in this entire process State does not hesitte even in negating its Constitutional responsibilities, because it has taken on his shoulders the responsibility of advancing the cause of the so called development.

#### Terror of Law and People's Dilemma

21.15 In this situation the ordinary people, particularly the members of the Scheduled Castes & Scheduled Tribes, are once again in a dilemma. Today the system is not their protector, but has turned against them. On the one hand, other stronger people are taking advantage of the situation in collusion with the system. On the other hand, the reply to each one of their problems is in the form of a rule or a law and an expression of resultant helplessness. The matter of fact is that the law is being used very skillfully as an instrument of exploitation. If labourer demands due wages, he is prohibited from walking on the field-bunds restrictions are imposed on his use of common resources. If he still does not behave, cases of theft and other crimes may be registered against him. And then begins the grinding of the wheels of law, not just months but years may pass by in going round the court, suffering atrocities of confinement without bail and if bail is granted then timeless travail in the jail in the absence of a surity. Is it not an irony that a resourceless citizen of a free country cannot even stand a surety for himself? What type of democracy are we establishing in our country?

21.16 The well to do people and the member of the organised sector are strong supporters of this system because the system is always too ready to protect their interests. But now the common man is placing a question mark and is not prepared to accept all this. When the system is not prepared to accept even the reality of its inequitous face let alone making amends in it in that

situation his non-acceptance appears to be the only ray of hope. In the state of not only indifference but even resistence from the system, that is the only support which is left for the common man and that is also the only hope. I have tried to search for some of these positive points in the national life and present them in this report.

21.17 The events which I have described here are those which I have personally witnessed. The scope of my personal observations in the context of inadequacy of the appropriate organisation for discharging the grave responsibilities of my office, has been rather limited. But these reactions of the people are not exceptions, they reflect the common thought and pervading uneasiness amongst the people today. That is not all. These ideas are also spreading. These reactions in their practical forms seem to be quite different depending on the specific situation in each case. But basically they are all linked with the struggle of the people's right to life. This brief review seeks to cover all colours of the spectrum.

#### Bonded Labourers

21.18 The bonded labourers are located at one extreme of this spectrum, who have not only lost their rights over natural resources but they are also being deprived of their means of production and, in the end, are compelled to sell their freedom and also their honour. These people are not prepared to accept that brand of liberation, which according to government scheme, de-links the labourers from their source of livelihood and thereafter are left to face the tragedy of uncertainty of acquiring a new economic base as a token of their 'rehabilitation'. They are determined to establish their natural and Constitutional rights over those means of production, from which they have been earning their living and on which other people have created monopoly right through their seizure in legal traps. If the government is unable to get the incogruous arrangements of the minerals in Shankargarh block of Allahabad from the tangle of the Court, on which depends the living of thousands of people, people have decided that they have nothing to do with that 'war about paper rights', they are declaring their right to make a living from those resources as a citizen of the country. Let the government and the owners settle their disputes in accordance with law. It does not, in any way, affect their natural and fundamental rights as a citizen. A similar decision has already been taken by other workers who are making a living from stone, sand and earth-quarrying in the districts of Sonbadhra, Banda, Satna and such others landless labourers.

## (2) Landless Cultivators

21.19 In the context of helplessness of the government with regard to enforcing the principle of 'land to the tiller', the people of Sole in Daltanganj of Bihar and Pulimamidi in Rangareddy of Andhra Pradesh are establishing, from their side, in a peaceful way, their right to continually make a living from the land which they have been tilling. They have declared that they have a right over 'palhat' land. The benami lands and the lands in the name of fake trusts belong to those who till them. The owner cannot evict a share cropper, in their resolve. It is their goodness that they are prepared to give a one-third share to the person whose name is on the record treating him as an owner even now. But to till the land is their right. Nobody can come in their way.

21.20 The government has not implemented their own laws with regard to the ghair mazarua lands and ceiling surplus lands. And in this way, not only old estates are continuing as usual, albeit under new masks, but big jagirs are being established in the name of development. Even today there are sugar mills having farms of 5000 acres and more in Gandhiji's Champaran. The farmers in the neighbourhood cannot prepare gur for their personal consumption with their own hands from the cane grown in their own fields. On the other hand, thousands of landless people are burning with despair. When the landless of Champaran, or those trapped in similar situations in other areas of the country, decide to make a living by tilling the land which is the fountain of all life in universe, which a few people have seized, grossly misusing the law and the system they are only establishing their right to life. After all, can anybody have a right to separate the child from his mother!

21.21 Similarly the big new jagirs which have been established in Karnataka in the name of promoting industries, ignoring the rights of the people are being opposed by the people. They are determined in some areas not to allow even government companies to occupy those lands they are also establishing this basic rights of their's.

## Settlement and Record of Land

21.22 The operational law of government that "land belongs to one whose name is entered in the record" has made the common man, particularly the tribal, entirely subservient to others in relation to their means of livelihood. How can he know whether his name is there on the record or not? The experience of the people of Sonbhadra in U.P. with regard to the settlement operations of land undertaken three times in the past 30 years has been that under the law, as it exists, they will not be able to get their rights even on the lands. The truth is that a stage has come where they may lose everything. Therefore, they have decided to take in their own hands the management of land after

rejecting the present process of the government. They are saying that the government may review its law and, if necessary, make a suitable change. But in the matter of land, they will manage their affairs on their own. If the government prepares the papers after a dialogue with the people of the village, they are prepared to extend their support. But in matters of land, the final decision shall be their's. What do the outsiders know about them? Their premise is very simple. Their action in this regard is in consonance of the spirit of Gram Swaraj enshrined in our Constitution.

#### My Village my Government

21.23 The tribal people of Garhchiroli, Adilabad and Bastar are not prepared to accept that they are encroachers in the forests which have been their homes for ages and that their social customs can be an offence. The State did not discharge its responsibility to adapt the system to their tradition, whose penalty has to be borne by the people. Now the people are not prepared to wait any more for government initiative. The people in Adilabad have established their Rai Sabhas, which settle all matters concerning their life. Similarly, the people of Garhchiroli and Bastr are resolving to take into their own hands the management of forests land and their social matters. They are making a declaration of "my village my government". This is their right.

21.24 The people have decided to take in their own hands the mangement of forest as a result of the neglect of people's interests in the management of the forest. The Chipco movement of Uttarakhand but on the same lines the women in the neighbourhood of Jagdalpur in Bastar in Madhya Pradesh have taken over the management of forests in about 40 villages. The forest department may have formal right over the forests in these villages, but on the spot the effective control is with the women. Similarly, the control of the forest department on the forest of Kolhan area in Singhbhum district of Bihar is notional. In practice the local people are managing the entire area according to their tradition. Similarly, in some areas the forest department is obliged to accept the decision of the people with regard to the management of social forestry. The people in Garhchiroli have taken over the management of nister forests in accordance with their tradition, which for some time and passed on to the forest department. The people, being concerned about the unregulated felling of bamboo in the neighbouring forest because of which bamboo was disappearing from the area, have given notice to the government and decided that any further felling of bamboo in this area will be under their supervision.

#### Displacement and Right to Life

21.25 In the end, the boon of nature in many areas is proving to be a curse for them. The people are witnessing destruction in the name of development. The tribal is rejecting the system which snatches away their basis of life in

exchange of "a few pieces of paper". He is taking a resolve to reestablish his right to life. In protest, the tribal who has been living in the forests for ages, which are reserved, in areas like Adilabad, Nasik or B.R.Hills are not prepared to leave their homes. The people in many sancturies and national parks are rejecting that law according to which they are being forced to move out from the areas, where they have been coexisting with wild animals for ages just because the government is concerned about their protection and wants them to move out.

21.26 On the other side, the displacement by big projects is now acquired a demonic form. In protest village after village in the area of submergence of Swarnrekha in Singhbhum, Auranga Dam in Daltanganj area refusing to accept cash compensation. They are not prepared to leave their homes. In the same way, the people from Bodhghat in Bastar and Inchampalli in Garhchiroli are not prepared to move out of their area. Elsewhere in Gandha maidan they are not agreeable for destruction of their holy places in the name of development.

21.27 This struggle is particularly on in all the tribal areas. But it is the sharpest at this time in Narmada Valley about which I have discussed in detail. Most of the tribal and other people in this valley are not prepared to leave their homes. They have conveyed to the government their resolve that they will not leave their places. If the dam is being constructed let it be constructed, but they will not allow it to be filled with water. And if the government decided to fill it, they are prepared for a watery grave. In this way, they are violating the law in a way.

### Three States of People's Resolutions

21.28 The reactions of the people and their resolutions described above are in different forms., But there is one common theme therein that they appear to be violations of law. Therefore, they cannot be said to be proper from the point of view of the system. Broadly there are three types of situations. Firstly, there are those situations in which the people are not prepared to compromise at any cost, their right to life is linked with the use of natural resources. Secondly are those situations where the concern is that the workers should not, in any way, acquire any right over the means of production. Moreover the proposition that the people should be able to use on a continuing basis the means of production on which they are dependent for their living is not accepted in the present legal system. Thirdly are those situations where they are obliged to oppose those laws which are against their traditions or are against even the spirit of the Constitution and human rights. It will be necessary to see these three situations separately and also discuss whether they are justified.

### Anomalies in Tribal Areas

21.29 First of all if we see the system of the tribal areas, there is only one reason for continuing mismanagement, dis-satisfaction and oppression. The structure of the law and the system have not been adapted to the traditions of the tribal people in accordance with the spirit of the Constitution. That is the basic reason for the appearance of anomalies and state of confrontation. The irony is that in this confrontation, the same very people are suffering who have been denied the protection provided under the Constitution and with regard to whom the state did not discharge its Constitutional responsibility.

21.30 When the government did not discharge its responsibility even after 40 years of the adoption of the Constitution and the state of the 'criminalisation' of the tribal societies which was not only allowed to exist but became worse and the system was not adapted in the tribal areas according to the needs of the people as per the provisions of the Constitution, is it not the right of the people that they should themselves establish their own system in accordance with the spirit of the Constitution and make a resolution for achieving this? It is natural that in doing so some laws will come in the way and some steps of there may also be against the law. It is here that a state of doubt may arise. Can the people not overlook some laws or even break some laws for protecting their Constitutional rights? This is a grave question which has to be considered. These questions are also arisen in other situations concerning the right of the poor people. Therefore we will discuss in detail some of these questions.

### Anomalies with regard to Means of Production

21.31 We will now move away from tribal areas and consider the problems of those labourers who are being denied the right to use the means of production, those who do not have any source of living. The resources or means of production, from which these people are making a living, are either under the control of some individuals or are directly under the control of the State itself. In either situation, the state or the individual is using these resources in the form of property, while for the people there resources are the basis of their life. In this situation, the question is that if the law does not recognise even the existence of labourers vis-a-vis the means of production do they have any right or not ?

31.32 The right to live is basic. Every citizen of the country has a right to live. But on the other side the right to property has not been recognised as fundamental. Therefore, when there is a question about the choice between the right to life and right to property the former is much more weighty and to establish the same becomes a basic right of the individual. The law can settle the issues concerning the claims of two individuals equitably only if

they both belong to the same category. But when on the one side is the claim concerning the right to property and on the other is the right to life, the situation is different. In this case if any system or any law does not protect the right to life of an individual in preference to the right to property, it cannot be said to be in consonance with the spirit of our Constitution. Therefore, we again come to the same basic question that whether in a situation where the law is either silent or adverse on a point concerning the right to life, does the individual have a right to protect on his own his right to life, which we will consider in its totality separately.

#### Anomalies of Development and its Price

21.33 And in the end, we have those situations where the State tries to take away the basis of the life of people for developmental projects under the cover of law against their wish, ignoring their right to life. The biggest burden in this case falls on the tribal communities. According to the law, the people are entitled for cash compensation. But in the eyes of the people, particularly the tribal people, it has no meaning. In their perception, land, forest and everything is being snatched away from them. That is not all. Their social identity is at stake. Even on this vital issue concerning their life, there is no concern on the part of the government to initiate any dialogue because there is no scope for it under the law and formal action under it. Once the government takes a decision, acquisition of land becomes a destiny. The legal action for acquisition of land is a mere formality, which can be completed any time. In this way, even the intention of the law, which itself is half-baked, is not fulfilled. That the spirit of the law should be honoured is not matter of concern of anyone, nor is there any thought about it. When the position about the compliance of a law is this, how can there be any hope that care will be taken to see that the law is not against the tribal tradition and it is not violative of the spirit of the Constitution.

21.34 The tribal people, throughout their history, have had only one experience that whenever they came in contact with outside world, they had to face coercion. When the tribal people lost their rights over forest they could not do anything, outsiders have been taking away their land on one pretext or the other. And if now the government itself talks about taking away their lands they feel themselves as helpless. Therefore, a simple tribal utters in sheer helplessness, we belong to the sarkar kill us or let us live. He has no knowledge about the rights under the law, nor about the Constitutional protection. Therefore, the minions of government treat his helplessness as the right of the Raj. Seeing no option in the face of government orders he nods his head which is declared as his consent or free-will acceptance with. Therefore, sometimes he thinks of running into the forests. But he also knows the type of treatment which

awaits him there. Therefore, sometimes when greatly persuaded he goes out to see the land. If he is forced to run in the end, what alternative he has got. And he is not unaware about the way the tribal people are being forced to run and about their condition later. Therefore, if the government makes some promises gives him some hope, he follows them for a while in good faith. But can it be concluded from this behaviour of the tribal placed in this situation as he is that no compulsion is being used against him and he is preparing to go out of his free will ?

#### Question of Identity of the Community

21.35 The person is treated only as an individual both in our law as also in our general perception. But what will happen to the community after displacement, it neither an issue worthy of attention, nor is there any discussion about it at any level in the country. All the existing social and economic relationships which bind people in the communities are bound to be broken after displacement and every person will have to establish new relationships in the new setting. But will it be possible for the tribal to do so? After the officers depart or when the people come back to their village after their visit outside, this is the only issue of discussion of these people when they sit together... the mother will be left behind, the forest no longer be there, the desh (country) will be left behind, the community will break. Where we will go alone in that strange world which has always looked them down so far, which has not considered us again worthy of anything except as article of exploitation, how will be able to live there?

21.36 Here we are face to face with questions of cultural values and human rights.. Every community has a right to maintain its identity. If the existence of a community is in danger, the community has a right to meet the challenge on its own. But that phase of history in the world is now over where the law of jungle was prevailing so far as the struggle for survival of the communities was concerned when the victory of more barbarous community by itself could be accepted as the justification of the struggle. In our country, barring a few exceptions, such behaviour has never acquired legitimacy. And today, even our Constitution is against it. The tribal communities have a right under the Charter of Human Rights to stand against powerful systems, to dissent on questions concerning their existence and to command full respect towards their Then if there is no need even for a dialogue with a community which has all these rights, if there is no realisation that such a community exists and it is necessary to have a dialogue with it and if there is no provision even in any law to that effect. This anomaly is a legacy can it called as just by any standards whatsoever colonial era about which no thought has been given, our laws have not been remoulded in the frame of democratic values and social equity. The full impact of this omission about rights and values falls on the ordinary people, particularly the tribal communities, which is a matter of gross injustice.

21.37 In this way, many of the vulnerable sections of our society particularly the tribal people are now faced with a life and death struggle. They are getting more and more organised to meet this grave crisis. They are now obliged to make a resolve that they will now leave their homes. But, on the other hand, higher and still higher provisions are being made for the so called developmental projects in the successive five year plans. One dam after another is being constructed, foundations of new dams are being laid. When their voice of protest is not heard, they are occasionally trying to block these works here and there. But it is clear that their strength is nothing in comparison to the strength of the system. Therefore, at many places their movements also collapse.

21.38 The basic question in relation to their reactions / movements is that can the system take any legal action against them? I have held in my previous report that if the government wishes to take over a natural resource including land for any work, it is a civil issue. When land and natural resources are a source of living of the people, even the State has no right to take away those rights on any basis whatsoever. But when the question of the existence of a community itself is involved, no other argument of any sort can do. If any law gives this power to the State, that law itself becomes unconstitutional, it is also against human rights. And if any country can put on stake the existence of a small community, knowingly and pushes it to the precipice of destruction, it would be a blot on human civilisation and culture. The administration has no right to use physical force to take away the source of living of a person. If force is used against a community engaged in the struggle for its existence, it is not only against the ordinary human values but, in the case of tribal people, it is violation of their rights. That is not at all. It will also be a case where the government will be guilty of taking undue advantage of its position of strength and turning its back from Constitutional responsibility.

21.39 The main reason for this state of confrontation in the tribal areas is the disregard of its responsibility by the government. When construction of big projects was started after Independence, thought should have been given to some important questions like 'what should be the basis of determining public purpose?', 'what should be the role of the people in that process? Will the people, who will be losing the source of their livelihood and whose right to life be affected, have a right to participate in that decision-making or not

Whatever the people receive in all these projects is only a matter of grace nothing is in the form of a right. On the other hand, no thought has been given to the question that if the entire natural resources of the tribal areas are required for national development what will happen to those tribal people who are depending on them for their living at present? What will happen to the Constitutional rights of the people and the special provisions for protection of the tribal people? The government is silent on these issues even after 40 years of Independence. There is not even a general policy or a set of directive principles in this regard, let alone the question of honoring Constitutional and human rights. Therefore, everyone is doing whatever he likes anywhere, the people are subjected to arbitrary action. The struggle of the tribal people against big projects in the tribal area is a form of their resolve to protect the Constitutional rights and struggle against arbitrary action by the system.

#### Search for Alternative

21.40 It is clear that those who are responsible for directing our system have not only been unsuccessful in removing the anomalies described in this report, but the anomalies have been further deepening. In this situation what can be the alternatives before the common man who is a victim of those anomalies? When the people are not able to compromise with the anomalous situations, state of confrontation arises. But there is a qualitative difference amongst different types of confrontations. One situation of confrontation is that where a person himself may be on the wrong, yet he may challenge the system. Or even where there is no mistake, yet the path chosen may not be correct. But the other situations are those where even though there is violation of the norms of the system in a formal sense, yet the confrontation is for justice. Ordinarily it is expected in the case of such anomalies that there are some processes within the system itself which become active for their removal. But this does not happen always particularly when vested interests begin to take advantage of those anomalous situation for their benefit. In such situations the system continues to move as usual in accordance with the law and the rules, the routine is followed, yet justice gets strangled.

21.41 In our country the situation at the moment is somewhat like the one described above. But fortunately the people were not required to go far to find a way for meeting the challenge. When the common man started turning the pages of our history, he found that the father of the nation himself declared that "to submit to injustice is a sin". He further established the principle, that to bear injustice is a sin, by breaking the unjust salt law himself. In this context when people started examining the legal system, it was found that a number of laws, as I have discussed earlier, by virtue of their being an integral

part of the colonial system, are against the spirit of the Constitution. They are unconstitutional. Many people now find oppression of unconstitutional laws as unbearable. Therefore, they have started declaring at many places that these laws are not acceptable to them. (Annexure 9)

21.42 Similarly "Swaraj is my birth right" was a declaration made by Lokmanya Tilak. In many tribal areas, after having tried to have a glimpse of swaraj for long 40 years after independence, the people have come to the conclusion that self-governance is not something which can be begged, it is a matter of people's own resolution. Similarly if the State is unable to adapt the legal system so that it is in consonance with their tradition, the people can lay the foundations of a new system, derecognising the unconstitutional laws on their own, this is their birth right.

21.43 These resolutions of the people should not be viewed in the narrow legal frame, but in the broader perspective of human rights and democratic values. Our Constitution is a beautiful document of human rights. No other system in the world is more comprehensive and liberal. But these unparalleled merits of our Constitution have not been given due attention. They have not only remained unseen, but have even been violated. Therefore the entitlement of the tribal people has become meaningless. Similarly the right to life of the people is sacred. The right to life is not limited only to a right for animal-like existence, every person and smallest community has the right to lead a life with dignity according to human values. If there are any impediments in this regard, they cannot be taken to be in consonance with the spirit of our Constitution.

21.44 The anomalies described above are serious. They are against the national ethos and democratic values. The delay of even single day in removing them is at a heavy cost to the people. If the government does not take initiative to remove them even now, then atleast this much can be expected of it that it will not pronounce those people as offenders who are taking a resolve for establishment of their rights. Self-governance or management of one's own life is a soul of democracy. It is the duty of every citizen to support those who are struggling for establishing these rights. I hope that the government will support these resolutions of the people which are for establishing the right to life in general and for managing their affairs according to their tradition in the tribal areas in particular. And further the government will also remould the formal system in accordance with the wishes of the people so that the Constitutional schema is given a concrete form, albeit with considerable delay.

## RIGHTS AND RESPONSIBILITIES

It is clear from the above review about the state of the Scheduled Castes and Scheduled Tribes that our national life is passing through a very serious phase. A dualistic system is getting consolidated instead of the nation moving towards a socialist economy based on principles of equity, justice and fraternity. On the one hand, a handful of persons or the system itself have full control over the whole economy including the natural resources and means of production. But on the other hand, the bulk of the people, who include most of the members of the Scheduled Castes and Scheduled Tribes, are in a position where they either do not have any rights over the resources and means of production or whatever rights they still have are getting gradually extinguished. And even the last support of a person, his own labour is not properly valued. In the end, they are obliged to barter away their very freedom. This situation is totally against the Constitutional schema and is violation of the basic human right to life. A special responsibility is cast on all those citizens as a citizen, who believe in human values. They should come forward for meeting this challenge and achieving the national goal.

### The Learned People

22.2 Much hope cannot be reposed on the system, which includes administration and the organised sector, in the present situation with regard to the establishment of a socialistic economic system. The entire system, comprising the organised sector, is promoting inequity and exploitation because of which the poor are becoming poorer and most of the members of the Scheduled Castes and Scheduled Tribes are becoming victims of deprivation and exploitation. The first essential condition for getting out of this situation is to have a clear perception about the economy and the nation. Therefore, the biggest responsibility can be said to be cast on the learned people, who are expected to present an objective assessment

of the socio-economic situation, rising above their sectional interests so that the good points of the system as well as the distortions became known to the people which will enable them to take appropriate decisions on their own.

22.3 The present paradigm of development itself is not appropriate in the context of the situation in our country. Yet more and more people are adopting a lifestyle, which is linked with that paradigm, which will not be within the reach of the bulk of the people even in a distant future. But the common man is under the illusion that whatever has been achieved by a few today, will become possible for them as well tomorrow, that the present dualistic state is a passing phase and a matter of time. Therefore, the first task for the establishment of an equitable system is to rid the people of this illusion. In reality, the creation of a "Fourth World" is an essential condition of the style of development which has been accepted at the national level as the model. Most of the members of the Scheduled Castes and Scheduled Tribes are included in this Fourth World. Therefore, the resourceless, particularly the Scheduled Castes cannot get an equitable position in the system so long as the present paradigm of development is pursued. It is the responsibility of the community of the learned to present a clear and categorical analysis of the situation as it is.

#### The System

22.4 Even though not much can be expected from the system in the situation described above, yet the system can take some action with regard to those basic principles which it considers to comprise its own foundation. The Constitution provides the basic frame of our system and it contains certain basic principles which are accepted by all. But many a law are not in consonance with the spirit of our Constitution, many of our administrative actions are not even in accordance with the provisions of those inequitable laws. If the right to life is the most basic right of a citizen, and the system created by the British is violative of the same, then at least the removal of this distortion is the duty of the system. And this dissonance can be removed. It appears that this action has not been taken simply because it would go against the interest of the system and the organised sector. This is wrong as a principle. A beginning should be

made in this regard with a incisive debate at the highest level in the system, i.e., the Parliament and State Legislatures. All those laws, which concern the basic rights of the people, should be amended immediately. That will not be enough. The Supreme Court itself may take the initiative and consider as to why this process, which was an integral part of the Constitutional frame, was not even initiated and, if necessary, give suitable directions for doing so now.

### Political Parties

22.5 The political parties have the responsibility not only to operate the system but also to give it the right direction. But the party-based political processes have proved to be insufficient for bringing about basic social change. It is a matter of great regret that the peoples trust in them is fast waning. In the party-based political activity, elections is the most prominent process. The people are not really aware as to what they can expect and what they should not expect from it. Therefore expectations sore sky high at the time of elections. But once in power, the logic of the system begins to dominate the political parties. Therefore, after some time when people can see solid results, a wave of despair grips them.

22.6 Unfortunately, in some cases even all political party consensus in the party-based political activity can go against the basic interest of the common man. The interest of the system and the organised sector have become so dominating and their logic so illusive that the political parties are forced to support them even against long term national interest or they may also adopt the same path knowingly on account of their own internal compulsions. Otherwise how can one explain their support over the demands of labour aristocracy and complete indifference on the issues concerning the principle of land to the tiller. That is not all. Sometimes because of the arithmetic of votes, basic principles concerning small minorities or innocent masses can be violated. I have given only some examples. I hope that the political parties will consider them with seriousness and engender an atmosphere in which politics of votes does not dominate the issues concerning basic principles.

### Modern Sector

22.7 But the biggest question about the consciousness about responsible

behaviour concerns the modern sector of our nation, which can be said to be a synonym of the organised sector. The modern sector considers itself to be the symbol of a rational system based on principles. If this is true, the first responsibility of this sector is to realise its own inequitous position. The organised sector so far has not only succeeded in fully cornering the benefits of modern development, but has also been taking advantage of the processes of deprivation and exploitation of the unorganised sector. Therefore, in the gross national product the share of this sector is determined first deducted. The members of the unorganised sector have to remain contented with whatever remains there after. This is the first and biggest cause of injustice. That is why the call of the leadership belonging to the organised sector has no strength and not even one step is taken in the direction of ending social inequity. Therefore, it is necessary that the organised sector should realise its inequitous position and think about the rights of those people in the un-organised sector who have today reached the despicable level of biological exploitation.

#### India, Bharat and Hindustanava

22.8 In our country there has been a talk for some time about so called India Vs Bharat. But in that discussion the interests of that big world of Hindustanava which is below India and which covers most of the members of the Scheduled Castes and Scheduled Tribes, have been ignored. Bharat is keen to compete with India and get linked with it. In this process the situation of Hindustanava further deteriorates. It is necessary for organised sector or India to realise and accept its unjust position. In a similar fashion, it is necessary on the part of Bharat, which has full command over the resources and means of production in the traditional system, that it must realise and acknowledge its unjust position in relation to the resourceless Hindustanava. It is necessary for Bharat to move with Hindustanava rather than be obsessed with competition and collaboration with 'India', both of them are victims of the same process. Justice in favour of Hindustanava can be the first decisive step in the direction of the establishment of a socialistic society - in the absence of it, all other processes will support the consolidation of the dualistic system.

#### Individual

22.9 So far I have talked about the sense of responsibility of different sections of society. Every person is a member of some class or the other and is a co-sharer in its interest. But inspite of this fact, every individual has one's own identity and one's own sensitivity. In our country,

every person has some basic rights as a member of the democratic system, which, to a large extent, are also enjoyed by those persons who are articulate. But the same very rights are not available to majority of the people. Therefore a duty is cast on every sensible and sensitive person that he should think about the rights of the majority of the citizens and support them in their struggles for establishment of those rights.

22.10 Those persons, who are a part of the system and are particularly associated with administrative system, will have to especially consider this issue. They enjoy the big protection of our constitutional schema. If a person is able to enter this class, he is free for life from the raw struggle for existence. On the other hand, the majority of the people are facing questions of earning their bread for the day. In this situation what is he contributing in exchange for the tremendous protection of the Constitution which he enjoys towards reinforcing the same constitutional schema in the favour of the ordinary man and for giving it a real form? It is the duty of all those people who realise their unjust position, notwithstanding the fact that they are a part of that unjust system, that they should support those people, in whatever way it may be possible, who are struggling against that inequitable system. These people can at least do one thing that in all those cases, where injustice is being done against some people, the oppressor is denied the support of the system against them. In this way they can force the system from within that it should not violate the basic principles on the basis of superficial logic. The argument that there is a law and there are rules, should not be allowed to be used against the basic rights of the people. That is not all. They should also accept that the laws and the rules are merely instruments for achieving the national objective, they cannot be considered to be the end in themselves. If those who are operating the system can realise this much, it will be a great support for the oppressed.

#### Voluntary Institutions

22.11 The sense of responsibility of individuals can also get expression through voluntary institutions. The role of voluntary institutions, particularly small voluntary institutions and social activists, is especially desirable in peoples movement. The real expression of an individual's personality is possible only at the level of small community and it is at that level that the process of basic change can also begin. Today, throughout the country a new thinking is emerging at the level of the common man. Any effort to direct it from a central point, as has been

the case so far, will not only be wrong out will be detrimental. If this new wave pushes ahead in the form of internal process of the community, only then it can become a big power for the desired change. Therefore, there is a need for sensitive people at the level of small community throughout the country who may be familiar with the ways of outside system, who may have a good understanding of the broader social economic context, but who can merge their with the small community, who can become partners in their internal processes and who can participate in the voyage of reconstruction of the national life in that capacity along with the ordinary citizen.

### Youth

22.12 In the end, if any one group, on whom is the great responsibility of remoulding the powerful inequitous system and giving it a form which may be in consonance with spirit of the Constitution, it is the youth. The challenge of building a new India itself today rests with the young people. But our country is passing through a great crisis. On the other hand is the crisis of values. On the other hand the right to life of the ordinary people is being disregarded by the inequitous system, people are being forced to sell their liberty, the natural rights of the people are being declared as non-acceptable. There can be no other greater challenge for the young than this crisis. It is those persons from amongst the young, who must come forward who are burning with anger against the inequity of our social system, who are prepared for any sacrifice to achieve their goal. Unfortunately, the model, which has been accepted in our country, for the concept of development and style of life is misleading the young people. The first great task which the youth will have to take is to debunk this illusion and get out of it. If this illusion disappears, the scope of their work will become clear, the objectives of their life will also become clearer and it will be possible for them to join the people in their struggle for their right to life and contribute to the building of a new India imbued with the ideals of our Constitution.

### The New Wave

22.13 There is a new wave in our country. The people are becoming conscious about their right to life. A new atmosphere is being engendered at the level of the common man, in which the logic of the system is not being accepted as an authoritative declaration or the Gospel truth, as was the case till now. This is indicative of a qualitative change in the national life. After such realisation, the situation changes and it can never be the same again. The common man, particularly the people in the tribal

areas, are keen for a change in the system in the context of their basic rights. Moreover, they are also making a resolve in their capacity as free citizens to give a new direction to their system in accordance with the spirit of the Constitution and human values. The labourers, who comprise the bulk of the population, are not prepared to accept a system in which the right to life may stand denigrated and the citizen may not have the right to lead his life with dignity.

22.14 I hope that this change in the thinking of the people will not be allowed to take the form of confrontation with the system. Instead its enormous power will be accepted in the form of a positive element for transforming the inequitous form of the system. It is here that a big challenge arises before the enlightened groups, which include intellectuals, political leaders, administrators and professionals, whether they can rise above the short term and group interests and recognise the real nature of the new wave and ensure that, that unlimited power is not dissipated in confrontation but is used for building of a new India.

#### Special Responsibility under the Constitution

22.15 The responsibility of some people in the system, particularly those who are concerned with the interest of the so called weaker sections of the community, is quite clear. I will urge that they may try to perceive the grave responsibility outside the routine arena, in the broader context and ensure that an opportunity for leading a life with dignity in accordance with the provisions of the Constitution becomes a reality for the weaker sections, particularly the members of Scheduled Castes and the Scheduled Tribes. My own organisation is included in this group of people with special responsibilities. This Report and the earlier Report make it quite clear that the basic rights of the members of the Scheduled Castes and Scheduled Tribes are being violated, their right to life is also being transgressed, in many cases the law is incongruous and the system itself is against the people. In many cases they do not have any other alternative except to establish by themselves their basic rights and reject the unconstitutional laws.

22.16 It is my duty to draw the attention of the anomalies of the system in the struggle for the basic rights of the Scheduled Castes and Scheduled Tribes. I had drawn attention to a number of anomalies in my previous Report as well. Many more things have come into a clearer focus in the present Report. But this discussion has not had so far any perceptible impact on the system. Whatever I will say in future will be a mere repe-

tition. In this context it is my duty that I ensure that the full context of the provisions of the Constitution reaches those people for whom those provisions have been made and the responsibility for review of whose interest has been placed on me. But the common man does not understand the language of principles, he is caught in the problems of the day. Unless the final essence of all principles is placed before him in the context of his problems of the day, it has no meaning to him. It does not have any significance either. The echo of this Report will fill the assembly halls for a while and then will get sublimed in the void around. The voice of the struggle for life can be the only proper and lasting expression. Therefore, there is no other way except to get directly linked with the struggles of life for establishing that dialogue for discharging that responsibility. This will be my effort. The form and the frame of the Constitutional duty will depend on the situation in each case.

*B. D. Sharma*

( B. D. SHARMA )

COMMISSIONER FOR  
SCHEDULED CASTES & SCHEDULED TRIBES

**Copy of letter dated 31-3-90 from Dr. B.D. Sharma  
Commissioner for Scheduled Castes & Scheduled  
Tribes to the Prime Minister**

I wish to draw your attention to the critical phase in which the struggle of the people in Narmada Valley has reached and immediate intervention at your level is urgently called for. The people are determined not to move out from their homes in valley and prefer a watery grave than disorganisation and destitution in an unknown world which has been the story of all displaced so far.

You are perhaps aware that the submergence in case of some villages is now imminent and may become a reality even in June 90 as the execution of Sardar Sarovar project has been speeded up by the Govt. of Gujarat.

This movement after the large congregation of similarly placed people elsewhere and social activists from all over the country at Harsud in October 1989, has become a symbol of national struggle, particularly of the tribal people against the present style of development. In the hurry to achieve growth the question of equity has been relegated to a secondary position. The fact that some people have to bear its cost has been accepted as inevitable and as a necessary condition of development.

This position is being taken by those who stand to benefit by that process or by those already arrived. It is sought to be justified by allusion to the experience in the so-called developed countries who could and did 'create a third world'. They transposed the miseries and the miseries of their new brave world unmindful of the wreckage which it wrought there. This logic is not acceptable to those who stand for the basic values in the national life as enshrined in the Constitution and the common man who is at the receiving end. A substantial section of our people are facing the spectre of being pushed into a 'fourth' or a 'fifth world' as the wheel of development moves on relentlessly creating a few islands of affluence. The decision of a person like Baba Amte to move out from his place where he served the worst afflicted sections of the humanity to this valley and face the vicissitudes as one of them is not just a token gesture. It is a natural response of a sensitive soul which can perceive the great human tragedy being enacted in this region and listen the voice of the voiceless facing the trauma.

I have the great privilege and a grave responsibility under the Constitution to investigate into the working of the Constitutional safeguards in relation to the Scheduled Castes and Scheduled Tribes in this country. The worst sufferers in the wake of what is termed as development are members of Scheduled Tribes. Consequently I had discussed in particular some facets of the tribal situation in detail as it is emerging in the wake of the execution of numerous development projects. These projects are based on those natural resources in the tribal regions on which the people have been subsisting for their living since time immemorial.

As per the law of the land, all resources not individually owned are deemed to be state property. The process of formal acceptance of individual rights in the tribal areas is either not complete or the position relating thereto is outdated. The biggest tragedy is that law does not take into account the symbiotic relationship of the tribal people and their habitat which also has cultural and religious significance. Consequently the tribal people can claim no right on state-owned common resources. Even those resources, which are individually owned, such as agricultural land, can be taken away albeit through legal process on payment of some compensation. I had given a number of examples in my Report where the people are not prepared for this forced exchange. They cannot even be lured by rosy promises of liberal compensation. Such forced displacement in tribal areas predictably and inevitably has resulted in disorganisation of the community and pauperisation of the people. Some 10 to 15% of the total tribal people are believed to have been afflicted so far by this process.

A general review of the prevailing situation in the tribal areas in the context of the Constitutional safeguards in the Report made it clear that the "law concerning acquisition of land is incongruous with the

tribal situation". It was a pity that "this incongruity has not even been noted by the executive which has been conferred full authority in unequivocal terms by the Constitution and by implication also the grave responsibility for removing all anomalies and distortions between law and tribal situation". The conclusion in the Report was clear that *"the tribal people are being denied due protection of Constitutional safeguards on a vital issue which concerns their very survival as a community"*.

The only course for the state in the face of these facts was, which was also recommended in the Report, that a thorough review should be undertaken of all ongoing projects so as 'to ensure that the safeguards provided for the tribal people in the Constitution are honoured in their real spirit and their side does not remain unconsidered simply because they did not have the opportunity or the necessary articulation for presenting the same'.

It is sad to note that even though the Report was presented in November 1988, this important question of denial of Constitutional safeguards to some of the most vulnerable sections of our people, who are innocent of modern processes and voiceless, has remained unheeded. Moreover even my personal intervention which could be possible only in a few cases because of the severe limitations—organisational and logistical—such as Hasdeo Rango and Burgee on Narmada did not have any effect in real terms on critical issues notwithstanding the favourable responses from the former Prime Minister and the State Chief Ministers. In this case people had to flee, flee for their life with nowhere to go in the face of surging waters as the dreaded dams rose above critical heights. All safeguards of the Constitution and intervention on their behalf came to nought. Even strong protest of the people themselves, in whose name the state functions, have not evoked any response.

The issue which faces the tribal people today is vital for their survival. I therefore, examined the same in further detail after submitting my last report. I find that in most of the cases, including that of Narmada Projects, even the provisions of the law, under which the land is being acquired and the people are being forcibly displaced, are not being followed in their true spirit. There are two important conditions before land can be acquired under the present law of land acquisition. Firstly, acquisition can be done only for a public purpose. Secondly the people have a right to be heard before a decision is taken to acquire their land.

The crucial concept 'public purpose' has not been defined under this law. This, in retrospect is not surprising, nay it was not done on purpose. Under the present stipulation anything which the Government of the day or a fleeting official considers as public purpose is deemed to be public purpose. Certain basic questions naturally arise from such stipulations which had been raised in the Report. It was clear that 'what can be deemed to be public purpose in the context of the tribal situation does not so much concern with what may simply be termed as legal or formal but touches the core of human values, civilizational obligation and in a narrower frame Constitutional safeguards'. Therefore "can the relative size of the communities involved be accepted as a sufficient ground for determining the 'public purpose'? Can a community be obliged to make way for others even at the peril of its disintegration and destitution of its members? The answer is a clear, emphatic and unequivocal 'No' ". Nothing needs to be added on this point at this stage.

So far the question of giving the people an opportunity to be heard, the position today is nothing short flagrant violation of the law. In most cases the formulation and approval of a project precedes the formal process of land acquisition. For example, in the case of Sardar Sarovar project most of the villages which will come under submergence have not been even issued a preliminary notice for acquisition of their lands under Section 4 of the Land Acquisition Act. Any notice at this stage to these people inviting their objections, if any, when construction has started, cannot but be mere performance of a ritual.

The above anomalies and contradictions are arising because a law which was enacted in the 19th century for acquisition of small pieces of land is being used for handling projects of mega dimensions which could not have been even imagined at that time.

This is not all. There is a deeper cleavage. The Land Acquisition Act, like many other laws, was enacted during the British period when basic objective of the state was consolidation of the imperial authority. Secondly most of these laws were based on premises and perceptions of the rulers. They completely ignored the ethos and values of our country. The natural resources including land was deemed to be property of the State or

individuals as the case may be. The rights of the people who were dependent on them for their living through the ages were ignored. The situation changed drastically when we adopted a Constitution whose objective is the establishment of a socialistic republic imbued with the spirit of equity, justice and fraternity. The right to life is the most fundamental of all human rights and is basic and absolute in our Constitutional schema. Any law which denied a person of this basic right cannot really be in keeping with its spirit.

I am constrained to note that this aspect of our legal system has been missed over the last 40 years. The contradictions are galore particularly in the tribal areas. For example, a number of tribal communities are still at hunting and gathering stage and as such subsist entirely on the forest. Yet this basic right of theirs is not recognised under the law. Instead, they are deemed to be encroachers. Many of them have been driven out of their homes arbitrarily, not infrequently with the use of force. This process is continuing. A number of communities, particularly the nomadic and seminomadic groups, have been subsisting on natural resources spread over large tracts, moving from one place to another according to a schema evolved over a long period in their history. The present law regulating the use of natural resources ignores this system completely. Consequently these communities are being incessantly marginalised, some of them having reached a precipice. The bulk of even those tribal people who have adopted settled cultivation living in resource rich region still continue to depend for a substantial part of their subsistence on natural resources. This aspect has been ignored in our legal system. Their access to the resources is being arbitrarily curbed.

The non-agricultural lands in ordinary villages, sometimes misnamed as waste lands, provide substantial part of the subsistence for the poorer people. They are the only source of living for some of them. The perception of the state about these resources and even the schemes for their development are oblivious about the rights of the people. Lastly, agricultural land provides livelihood not only to its owner but also to the tiller of the land, the share croppers and landless labourers. The present laws do not take cognizance of the rights of such people.

Under the provision of the Land Acquisition Act, land can be acquired from a person who may be formally recognised as its owner by payment of compensation at the market price. Even in this restricted frame, the provision cannot be said to be in consonance with the Constitutional provisions about right to life. A source of living cannot be equated with the price which it may fetch in the market. The law is silent about people other than the owner who depend on the resource for their living. Consequently alternative use of resources through acquisition or otherwise, denies many people the access to those resources without any consideration whatsoever.

It is particularly tragic that the State has taken no action for protecting the interests of the tribal people as a community in the Scheduled areas which is implicit in the Constitutional schema stipulated under the Fifth Schedule. The laws concerning ownership and management of natural resources including land and its acquisition extended to the tribal areas treat the people as individuals and not as members of a community. The community is still vibrant and a living reality in many tribal areas. It is the most important distinguishing character of the tribal society. Similarly these laws do not take cognizance of the cultural ethos of the people and religious significance of the natural habitat. It may be mentioned here that our country is a signatory to the ILO convention which envisages that the rights of the tribal people over their resources will be honoured. Yet the laws of the land are at variance with these basic premises about human rights. The tribal people have not merely been denied the benefits of Constitutional safeguards but are being subjected to the tyranny of many a incongruous laws some of which are violative of basic human rights.

In sum, the execution of developmental projects in the tribal areas is causing a severe backlash. They at best is more concerned with ritualistic compliance of the provisions of the law even though it may not be in keeping with the spirit of the same. In many areas the law itself is violative of the Constitutional safeguards and of basic human rights.

I have been pursuing some of the cases which were brought to my notice from different parts of the country. My interventions have no doubt yielded some fine sentiments but no basic change or even temporary relief to the people. The States are in a hurry. They swear by the laws, agreement and formal decisions which may not mean much to the people. On the contrary as noted above, they may not be in consonance with the Constitution and may even be violative of human rights.

The people are resisting these ingresses of the state in their own way. In fact this has been the situation in the tribal areas for over two centuries. The struggles for assertion of the rights of the people has been suppressed by force. When people refuse to make way for developmental project, use of force is not unknown. In view of the fact that this is an ongoing process which is becoming increasingly intense, the grave question about the use of force in acquisition of natural resources including land was discussed in detail in my previous report. Any differences in the process of acquisition are at best in the nature of civil disputes. Any use of force in such cases is out of place particularly against members of scheduled castes and scheduled tribes about whose protection the state has a special responsibility. Accordingly enactment of a central law was recommended prohibiting use of force in these matters. But no action has been taken so far. It is unfortunate that use of coercive processes is continuing unabated even in those matters where the people on the other side are fighting for their right to life.

In the instant case of Sardar Sarovar project on Narmada, I have requested that the three states and the Central Government together should have a dialogue with the people and arrive at a consensus about a package of rehabilitation acceptable to the people. It is a pity that even after long discussions, the first simple step of the three states coming together and offering a package for all affected people irrespective of the place where they may wish to settle, which is specifically stipulated in the Narmada Water Disputes Award, was not taken. The people have come to the inevitable conclusions that rehabilitation is not possible. Moreover they are now better conscious of the consequences and also of their rights. They are now determined to fight for their survival as individuals and people.

It is regretted that the voice of the people has remained unheard and the basic position about the projects remains unchanged. Not only that, as the people's struggle has become more organised and better articulated, the states instead of making serious effort to allay their fears and convince them about the possible alternative not by mere promises and words but by deeds have adopted an unbecoming strategy. There is an unseemingly haste in the execution of the project on the strength of mere conditional approvals without adequate information on many a vital issues. So far as rehabilitation is concerned even some of the preliminary issues like 'who is a displaced person', 'what are the entitlements' and such like remain to be finally settled not to speak of reparation of a comprehensive scheme. The intention of the authorities is clear, that is, to reach a point of no return and face the people with a *fait accompli*. Once the execution reaches a point where large investment has been made, that fact itself can become a valid ground for continuing the same notwithstanding the consequences thereof.

Such an approach does not behove the state. The execution of a large project is after all subject to so many contingencies even when every thing may appear to be in order. It may be stalled on account of inadequacy of funds, non-availability of man, machine or material or even miscalculations about a contract. Yet how is it that the basic human issues concerning thousands of people are not a sufficient ground for even a minute deviation from the schedule which is taken as sacrosanct? Consequently, whether the people are ready to move out or not, the rehabilitation prospects are bright or bleak is nobody's concern. The construction of the project continues notwithstanding the protests of the people on the strength of promise by the state which are of no avail in the end. When the water in the reservoir rises, the people must flee and flee for life not knowing where to go and what to do. The state can conveniently claim that no force has been used. But is such a claim sincere or real? What greater tragedy can people face than the inundation of their homes by a man-made flood meticulously designed and mercilessly executed ignoring their very existence as a people.

According to the official reports the first few villages in Maharashtra and Gujarat will get submerged after June 1990. There is panic in the valley. The people are preparing for a last ditch battle. I have, however, been informed by the Ministry of Water Resources that no submergence will start this year as a result of the work on the dam. It is just by way of extra caution that probability projections have been made and a warning system is being installed to meet the contingency which may arise with or without the dam. Such refinements cannot mean much to the ordinary people who are seeing before them the rising concrete structures girdling the river. If the flood occurs it will be deemed to be a direct consequence of the same notwithstanding other rational explanations.

As stated above, the execution of Sardar Sarovar like many other projects is not in keeping with the provisions of the law and the law itself is violative of the Constitutional safeguards provided for the tribal people as also of human rights. A dialogue was necessary with the people who are likely to be affected before starting the project with a view to arrive at an informed agreement about the possible alternative for their living in

consonance with their tradition, acceptable to them. This opportunity was missed. It is clear that the states are not as yet ready with a scheme of acceptable rehabilitation. Most of the affected people from Maharashtra and M.P., who comprise 90% of the affected people, are not prepared to move out.

As stated earlier, the Narmada Project has become a symbol of the struggle against inequitous development particularly of the tribal people. The tribal people have reached a critical point in their history where they are facing disorganisation as communities and destitution as individuals. The nation must have a second look at the basic issues facing these communities. The lapses so far in this regard cannot be taken as an alibi and justification for continuing on the same path which has wrought havoc in these areas. A beginning has to be made here and now. In the case of Sardar Sarover project, the people have not been taken into confidence notwithstanding their passionate and reasoned protests for a long time. This is a basic right of theirs which must be honoured. No consideration whatsoever either in terms of benefits likely to accrue to some areas and people or in terms of expenditure already incurred can be accepted as sufficient ground for violation of the Constitution and of the human rights. It is a moral issue and by the same token the acid test for the nation's commitment to equity and justice. Not a single person in this valley should be obliged to flee under the spectre of being drowned because that will signify the collapse of the value for which our Constitution stands.

I trust that you will take immediate steps to reassure the people about the protection of their basic right to life. It will not be possible unless the work on the project is stopped. No words can carry conviction so long as the work on the dam site continues and flooding of the valley remains a certainty. Therefore a dialogue with the three states must be taken up immediately and the work on this project stopped pending a satisfactory outcome acceptable to the people.

**Copy of letter dated 4th April, 1990 from Dr. B.D. Sharma, Commissioner for Scheduled Castes & Scheduled Tribes to the Governor of Maharashtra.**

I wish to draw your attention to the critical situation that has developed in some tribal villages of Narmada Valley in Maharashtra. The tribal people have resolved not to move out of their villages which are facing imminent submergence, perhaps this very monsoon.

The people in the valley, most of whom are tribals, have been moving all authorities for justice but to no avail. Initially their demand was for a reasonable resettlement. After some time when they came to the conclusion that rehabilitation was not possible they started the struggle which has been gaining strength. This is a struggle for their survival as a community and as individuals. They are now demanding the scrapping of the Sardar Sarovar Project. Their struggle is for the right to life. Their struggle has gained nationwide support which was amply demonstrated in Harsud last year.

The tribal representatives had also met recently on 31st March at Delhi in a Conference convened by the Government of India to consider tribal problems. There was unanimity in the Conference that displacement was their problem number one. They demanded that all ongoing projects must be stopped until a consensus can be worked about them with the people. In future no project should be taken up unless it has the consent of the people affected. In particular, it was urged that Sardar Sarovar should be stopped forthwith so that it does not reach a stage of no return. A complete reappraisal of the project including the issue of the right to life of the people should be ordered.

In view of the people's reaction to the project, the Government of Madhya Pradesh have assured them early last month to take up the matter with the central government. I understand that the Government of Maharashtra are also convinced that rehabilitation as per the legal provision of the State is not possible. The Government of Maharashtra have been considering to move the concerned authorities to stop the work on the dam. But so far these are mere promises and nothing concrete is happening. In fact work on the project is going on with full speed. The people are seeing this with their own eyes the disaster personified which will engulf them if not today, tomorrow.

The people, therefore, have taken the last resort available to them in a democratic society—to appeal to the Assembly and to stake their very life. Some of them have gone on an indefinite hunger strike preferring voluntary death to a forced disaster. The people in the villages are getting ready to get drowned rather than evacuate this monsoon.

I am making a special plea to you for the tribal people in the scheduled areas of your State whose protection is your special responsibility under the Constitution. I have investigated into the issues involved in the instant situation and have come to the following conclusion :—

- (i) The people who are facing displacement have been denied even the opportunity to be heard in keeping with the spirit of the law (the Land Acquisition Act) under whose provision they could be forced to move out. The imminent displacement is against the law.
- (ii) The basic issue involved in the process of displacement particularly in the tribal areas is the right to life. The natural resources including land are a means of livelihood which cannot be taken away by mere payment of compensation. The Land Acquisition Act is based on the promise that land is property and resources which are not formally recorded in the name of an individual are state property. Consequently the farmer can be acquired by payment of compensation and the latter without any consideration. This Act therefore, disregards the right to life of the people and therefore, against the spirit of the Constitution. Acquisition of land is unconstitutional.

- (iii) The Constitution has special provisions aimed at protecting tribal people. The major issues in their protection are their command over resources and their survival as a community. Both these aspects are not taken care of in the existing legal framework. Consequently the process of development in which they are evicted from their habitat and are obliged to face disorganisation and destitution is violative of basic human rights.

The people are, therefore, facing a grave crisis in which not only the due process of law has not been honoured but even their basic right to life is being denied and the human rights are violated. I may invite your kind attention to the fact that the Governor has a special responsibility as also the necessary authority to protect the interests of the tribal people. Nothing can be more sacrosanct than the right of life as individuals and right to survival as community. Thousands of tribal people are facing imminent disaster. This voice has remained unheeded. No worthwhile dialogue on this vital issue can be visualised so long as the work on the dam continues.

May I, therefore, request you to direct the state government to move the central government for stoppage of the work of Sardar Sarovar until a satisfactory solution is found for the problem of the people acceptable to them. You may also consider issuing a notification to annul Land Acquisition Act so far as it is applicable to the Scheduled areas of the state since it is violative of Constitution and human rights. The tribal people have to be protected against a law which does not recognise their right to life and the right to live as a community.

## नर्मदा घाटी की सरदार सरोवर परियोजना से उत्पन्न समस्याओं के विषय में गुजरात के मुख्यमंत्री को संबोधित डॉ० ब्रह्मदेव शर्मा, अनुसूचित जातियों तथा अनुसूचित जनजातियों के आयुक्त के अर्ध-शासकीय पत्र संख्या-9/4/90-आयुक्त, दिनांक 16-4-90 की प्रतिलिपि

नर्मदा घाटी की सरदार सरोवर से प्रभावित लोगों का एक शिष्ट मंडल मुझे आज मिला। इन प्रभावितों में अधिकतर आदिवासी लोग थे। इन लोगों ने अपना पक्ष प्रस्तुत करते हुए बुनियादी सविधानिक और मानवीय अधिकारों की रक्षा के लिए जिनकी अवहेलना हो रही है, आवश्यक कार्यवाही करने के लिए आग्रह किया।

सरदार सरोवर के कारण विस्थापन और उसके मानवीय पहलुओं पर पूर्व मुख्यमंत्री जी व अन्य अधिकारियों से कई बार चर्चा करने का अवसर मिला था। परन्तु नीति संबंधी कई निर्णयों के बावजूद अभी तक कोई ऐसा हल नहीं निकल पाया है जो प्रभावित लोगों को स्वीकार्य हो। यही नहीं, समय के साथ लोगों की आशंकाएँ बढ़ी हैं जिसके कारण अब उनका यह विश्वास है कि पुनर्वास संभव ही नहीं है। इसलिए उन्होंने संकल्प लिया है कि वे अपना घर नहीं छोड़ेंगे चाहे जल समाधि ही क्यों न लेना पड़े। इस हालत में यह जरूरी है कि इस उलझी समस्या पर पूर्वाग्रहों को छोड़कर बुनियादी सिद्धांतों के संदर्भ में विचार करना जरूरी है।

विस्थापन के बुनियादी सवाल पर मैं आपका ध्यान सविधान के अनुच्छेद 338 के अंतर्गत आदिवासी लोगों के लिये सविधानिक संरक्षण पर राष्ट्रपति को प्रेषित पिछली रिपोर्ट (अट्ठाइसवी) की ओर दिलाना चाहता हूँ। उसके विश्लेषण से यह स्पष्ट था कि आज आदिवासी समाज अपने इतिहास के एक नाजुक मोड़ पर पहुँच गया है। आज पूरी विकास की प्रक्रिया ही उनके लिए लोगों के परम्परागत जीवन के साधन छिनते जा रहे हैं इसके अलावा भूमि अधिग्रहण के लिए जो प्रक्रिया अपनाई जा रही है वह वर्तमान कानून की भावना के प्रतिकूल है। यही नहीं, भूमि अधिग्रहण का कानून सविधान की भावना के खिलाफ है। अतः सविधान के अंतर्गत आदिवासी समाज की रक्षा का भार राज्य को सौंपा गया है। इसलिए जहाँ स्वयं राज्य उनके इस जीवन के अधिकार से वंचित का कारण बन जाता है तो वे कहाँ जाएँ। इस तरह राज्य सविधान के दायित्व की अवहेलना का दोषी है और आदिवासियों के बुनियादी मानवीय अधिकारों का हनन हो रहा है। इस संदर्भ में मैंने यह आग्रह किया था कि कम से कम विस्थापन मामलों में राज्य किसी तरह से भी बल का प्रयोग न करे। परन्तु लगता है कि इस पहलू की अहमियत पर ध्यान नहीं दिया गया है।

मैं इस पत्र के साथ नर्मदा घाटी में विस्थापन की समस्या पर विस्तृत नोट संलग्न कर रहा हूँ अभी तक विकास परियोजनाओं से प्रभावित लोग विस्थापन को भाग्य की बात मान कर अन्याय को बिना समझे सहते रहे हैं। परन्तु इस मामले में अब एक बुनियादी बदलाव आया है जो प्रजातांत्रिक मूल्यों के अनुरूप है। परियोजनाओं से प्रभावित लोग अपने इन अधिकारों के प्रति सचेत हो गये हैं और वे अपने अधिकारों की रक्षा की माँग कर रहे हैं। नर्मदा घाटी का जन आंदोलन मानवीय अधिकारों की स्थापना का प्रतीक बन गया है। इसलिए विस्थापन और पुनर्वास के संदर्भ में अब तक राज्यों की रीतिनीति कुछ भी क्यों न रही हो, इस पूरे सवाल पर संवैधानिक संरक्षण और मानवीय अधिकारों को ध्यान में रखते हुए ऊँचे धरातल पर विचार करने की जरूरत है। इस तथ्य को कि अब तक वे लोग अन्याय सहते रहे हैं, आगे न्याय न मिलने के लिए समुचित कारण नहीं माना जा सकता है। इस संदर्भ में लोगों की यह माँग पूरी तरह से जायज है कि विस्थापन और पुनर्वास के व्यापक संदर्भ को देखते हुए सरदार सरोवर परियोजना की फिर से समीक्षा की जाय और जब तक एक ऐसी कार्ययोजना, जो कि लोगों को मंजूर हो, नहीं बन जाती है, परियोजना पर आगे काम न चलाया जाय जिससे कि यह परियोजना एक ऐसे स्थान पर न पहुँचे जहाँ से लौटने की गुंजाइश ही न रहे।

मैंने इस संदर्भ में प्रधानमंत्री जी को भी लिखा है और महाराष्ट्र और मध्यप्रदेश के मुख्यमंत्रियों से भी निवेदन किया है कि इस जन आंदोलन को, जिसे लोग, मनुष्य के सबसे बुनियादी अधिकार अर्थात् ज़िंदगी के अधिकार के लिए चला रहे हैं, कानून और व्यवस्था या केवल कुछ तकनीकी या कानूनी सवाल के रूप में न लिया जाय वरन् उस पर सविधानिक व्यवस्था और व्यापक मानवीय मूल्यों के संदर्भ में विचार किया जाय। मैं गुजरात में इस परियोजना के बारे में भावनात्मक जुड़ाव से परिचित हूँ। तीन साल के भीषण अकाल की हालत कभी फिर न आये यह भी सुनिश्चित करना है। परन्तु सवाल यह है कि क्या यही एकमात्र विकल्प है ? और यदि यही एक मात्र विकल्प है तो प्रभावितों से संवाद जरूरी है। उन लोगों का पक्ष जो अपनी आँखों के सामने सामाजिक बिखराव और विपन्नता की विभीषिका देख रहे हैं, उनके लिए भविष्य का कोई अर्थ नहीं है। आदिवासियों की जायज माँग को अस्वीकार करना और उनकी सहमति के बिना उनके अपने परंपरागत रिवाइस से हटने के लिए मजबूर करना, जिसमें आदिवासी समाज का बिखराव और व्यक्ति के रूप में विपन्नता अवश्यमावी है, सविधान के अन्तर्गत उनके अधिकारों की रक्षा व्यवस्था का उल्लंघन होगा। मुझे उम्मीद है कि आप इस भूमिका को स्वीकार करेंगे और 19 तारीख को दिल्ली में होने वाली बैठक में सब मिलकर एक ऐसा समाधान खोज लेंगे जो कि न्यायसंगत हो और जिसमें मानवीय अधिकारों की पूरी तरह से संरक्षण हो।

## नर्मदा घाटी की सरदार सरोवर परियोजना से उत्पन्न समस्याओं के विषय में मध्यप्रदेश के मुख्यमंत्री को संबोधित डॉ० ब्रह्मदेव शर्मा, अनुसूचित जातियों तथा अनुसूचित जनजातियों के आयुक्त के अर्घ शा० पत्र संख्या 9/4/90-आयुक्त, दिनांक 16-4-90 की प्रतिलिपि

नर्मदा घाटी की सरदार सरोवर से प्रभावित लोगों का एक शिष्ट मंडल मुझे आज मिला। इन प्रभावितों में अधिकतर आदिवासी लोग थे। इन लोगों ने अपना पक्ष प्रस्तुत करते हुए बुनियादी संविधानिक और मानवीय अधिकारों की रक्षा के लिए, जिनकी अवहेलना हो रही है, आवश्यक कार्रवाई करने के लिए आग्रह किया।

सरदार सरोवर से उत्पन्न समस्याओं से आप मलीभाति परिचित ही हैं। आपने पिछले माह नई सरकार बनने के तुरन्त बाद प्रभावितों की बात को सुना था और उनको यह आश्वासन भी दिया था कि आप इस परियोजना के पुनर्मूल्यांकन के लिए केन्द्रीय सरकार से आग्रह करेंगे। इसके साथ ही, इस परियोजना के मामले में आगे का कदम उठाने के पहले प्रभावितों के साथ चर्चा भी करेंगे। परन्तु इन आश्वासनों के बावजूद बांध का काम तो पहले जैसा चल ही रहा है परन्तु लोगों से बातचीत का सिलसिला भी नहीं शुरू हुआ। इसके उलटे अभी हाल ही प्रभावितों के खिलाफ बढ़वानी और अलीराजपुर में बल का प्रयोग किया गया है जिससे लोग अपने भविष्य के बारे में चिन्ताकुल हैं।

इस संबंध में मैं आपका ध्यान संविधान के अनुच्छेद 338 के अन्तर्गत आदिवासी लोगों के लिए संविधानिक संरक्षण पर राष्ट्रपति को प्रेषित अपनी पिछली रिपोर्ट (अट्टाइसवीं) की ओर दिलाना चाहता हूँ। उसके विश्लेषण से यह स्पष्ट था कि आज आदिवासी समाज अपने इतिहास के एक नाजुक मोड़ पर पहुँच गया है। आज पूरी विकास की प्रक्रिया ही उनके उलटे पड़ रही है। विकास के नाम पर तरह-तरह की परियोजनाएँ आदिवासी क्षेत्रों में बनाई जा रही हैं जिनके लिए उन लोगों के परम्परागत जीवन के साधन छिनते जा रहे हैं। इसके अलावा भूमि अधिग्रहण के लिए जो प्रक्रिया अपनाई जा रही है वह कानून की भावना के प्रतिकूल है। यही नहीं, भूमि अधिग्रहण के कानून में लोगों के नैसर्गिक संसाधनों पर जीवन के अवलम्बन को अनदेखा किया गया है इसलिए वह कानून संविधान की भावना के खिलाफ है। अतः संविधान के अन्तर्गत आदिवासी समाज की रक्षा का भार राज्य को सौंपा गया है। इसलिए जहाँ स्वयं राज्य उनको जीवन के अधिकार से वंचित करने लगे तो ये कहा जाय। इस हालत में राज्य संविधान के दायित्व की अवहेलना का दोषी है और आदिवासियों के बुनियादी मानवीय अधिकारों का हनन हो रहा है, इस संदर्भ में मैंने यह आग्रह किया था कि कम से कम विस्थापन मामलों में राज्य किसी तरह से भी बल का प्रयोग न करे। परन्तु लगता है कि इस पहलू की अहमियत पर ध्यान नहीं दिया गया है।

मैं इस पत्र के साथ नर्मदा घाटी में विस्थापन की समस्या पर विस्तृत नोट संलग्न कर रहा हूँ अभी तक विकास परियोजनाओं से प्रभावित लोग विस्थापन को भाग्य की बात मानकर अन्याय को बिना समझे सहते रहे हैं। परन्तु इस मामले में अब एक बुनियादी बदलाव आया है जो प्रजातान्त्रिक मूल्यों के अनुरूप है। परियोजनाओं से प्रभावित लोग अपने इन अधिकारों के प्रति सचेत हो गए हैं और वे अपने अधिकारों की रक्षा की मांग कर रहे हैं। नर्मदा घाटी का जन आंदोलन मानवीय अधिकारों की स्थापना का प्रतीक बन गया है। इसलिए विस्थापन और पुनर्वास के संदर्भ में अब तक राज्यों की रीतिनीति कुछ भी क्यों न रही हो इस पूरे सवाल पर संवैधानिक संरक्षण और मानवीय अधिकारों को ध्यान में रखते हुए ऊँचे धरातल पर विचार करने की जरूरत है। इस तथ्य को कि अब तक ये लोग अन्याय सहते रहे हैं, आगे न्याय न मिलने के लिए समुचित कारण नहीं माना जा सकता है। इस संदर्भ में लोगों की यह मांग पूरी तरह से जायज़ है कि विस्थापन और पुनर्वास के व्यापक संदर्भ को देखते हुए सरदार सरोवर परियोजना की फिर से समीक्षा की जाय और जब तक एक ऐसी कार्ययोजना, जो कि लोगों को मंजूर हो, नहीं बन जाती है, परियोजना पर आगे काम न चलाया जाय जिससे कि वह परियोजना एक ऐसे स्थान पर न पहुँचे जहाँ से लौटने की गुंजाइश ही न रहे।

मैंने इस संबंध में प्रधानमंत्री जी को भी लिखा है और महाराष्ट्र और गुजरात के मुख्यमंत्रियों से भी निवेदन किया है कि वे इस जन आंदोलन को, जिसे लोग, मनुष्य के सबसे बुनियादी अधिकार अर्थात् जिवनगै के अधिकार के लिए चला रहे हैं, कानून और व्यवस्था या केवल कुछ तकनीकी या कानूनी सवाल के रूप में न लिया जाय वरन उस पर संवैधानिक व्यवस्था और व्यापक मानवीय मूल्यों के संदर्भ में विचार किया जाय। उनकी जायज मांग को स्वीकार करना और उनकी सहमति के बिना उनके अपने परम्परागत रहवास से हटने के लिए मजबूर करना, जिसमें आदिवासी समाज का बिखराव और व्यक्ति के रूप में विपन्नता अवश्यमायी है, संविधान के अन्तर्गत उनके अधिकारों की रक्षा-व्यवस्था का उत्कर्षण होगा। मुझे उम्मीद है कि आप इस भूमिका को स्वीकार करेंगे और 19 तारीख को दिल्ली में होने वाली बैठक में सब मिल कर एक ऐसा समाधान खोज लेंगे जो कि न्यायसंगत हो और जिसमें अधिकारों का पूरी तरह से संरक्षण हो।

## नर्मदा घाटी की सरदार सरोवर परियोजना से उत्पन्न समस्याओं के विषय में महाराष्ट्र के मुख्यमंत्री को संबोधित डॉ. ब्रह्मदेव शर्मा, अनुसूचित जातियों तथा अनुसूचित जनजातियों के आयुक्त के अर्ध-शासकीय पत्र संख्या-9/4/90-आयुक्त दिनांक 16-4-90 की प्रतिलिपि

नर्मदा घाटी की सरदार सरोवर से प्रभावित लोगों का एक शिष्ट मंडल मुझे आज मिला। इन प्रभावितों में अधिकतर आदिवासी लोग थे। इन लोगों ने अपना पक्ष प्रस्तुत करते हुए बुनियादी संविधानिक और मानवीय अधिकारों की रक्षा के लिए जिनकी अवहेलना हो रही है, आवश्यक कार्यवाही करने के लिए आग्रह किया।

सरदार सरोवर से उत्पन्न समस्याओं से आप मलीमति परिचित ही हैं। मुझे खुशी है कि इसी माह बम्बई में अपने प्रभावितों को आश्वासन दिया था कि जब तक उनकी सहमति के साथ पुनर्वास की उपयुक्त योजना नहीं बन जाती तब तक सरदार सरोवर परियोजना पर कोई ऐसा काम नहीं किया जाएगा जिससे नर्मदा के बहाव में अवरोध हो और लोग उसकी धार से प्रभावित होने लगें। आपने स्वयं भी बांध के निर्माण स्थल का निरीक्षण किया और गुजरात सरकार को अपने मंतव्य से अवगत करा दिया है। परन्तु फिर भी लोग चिंताकुल हैं कि कहीं विस्थापन और पुनर्वास के बुनियादी सवाल के संदर्भ में इस परियोजना पर पुनर्विचार किये बिना ही वह परियोजना उस स्थिति में न पहुँच जाय जहाँ से लौटना संभव न हो।

इस संबंध में, मैं आपका ध्यान संविधान के अनुच्छेद 338 के अन्तर्गत आदिवासी लोगों के लिए संविधानिक संरक्षण पर राष्ट्रपति को प्रेषित पिछली रिपोर्ट (अट्टाइसवीं) की ओर दिलाना चाहता हूँ। उसके विश्लेषण से यह स्पष्ट था कि आज आदिवासी समाज अपने इतिहास के एक नाजुक मोड़ पर पहुँच गया है। आज पूरी विकास की प्रक्रिया ही उनके उलटे पड़ रही है। विकास के नाम पर तरह-तरह की परियोजनाएँ इन क्षेत्रों में बनाई जा रही हैं जिनके लिए लोगों के परम्परागत जीवन के साधन छिनते जा रहे हैं। इसके अलावा भूमि अधिग्रहण के लिए जो प्रक्रिया अपनाई जा रही है वह वर्तमान कानून की भावना के प्रतिकूल है। यही नहीं, भूमि अधिग्रहण का कानून संविधान की भावना के खिलाफ है। अंततः संविधान के अन्तर्गत आदिवासी समाज की रक्षा का भार राज्य को सौंपा गया है। इसलिए जहाँ स्वयं राज्य उनके इस जीवन के अधिकार से वंचित का कारण बन जाता है तो वे कहाँ जाँय। इस तरह राज्य संविधान के दायित्व की अवहेलना का दोषी है और आदिवासियों के बुनियादी मानवीय अधिकारों का हनन हो रहा है। इस संदर्भ में मैंने यह आग्रह किया था कि कम से कम विस्थापन मामलों में राज्य किसी तरह से भी बल का प्रयोग न करे। परन्तु लगता है कि इस पहलू की अहमियत पर ध्यान नहीं दिया गया है।

मैं इस पत्र के साथ नर्मदा घाटी में विस्थापन की समस्या पर विस्तृत नोट संलग्न कर रहा हूँ। अभी तक विकास परियोजनाओं से प्रभावित लोग विस्थापन को भाग्य की बात मानकर अन्याय को बिना समझे सहते रहे हैं। परन्तु इस मामले में अब एक बुनियादी बदलाव आया है जो प्रजातांत्रिक मूल्यों के अनुरूप है। परियोजनाओं से प्रभावित लोग अपने इन अधिकारों के प्रति सचेत हो गये हैं और वे अपने अधिकारों की रक्षा की मांग कर रहे हैं। इसलिए विस्थापन और पुनर्वास के संदर्भ में अब तक राज्यों की रीतिनीति कुछ भीक्यों न रही हो, इस पूरे सवाल पर संविधानिक संरक्षण और मानवीय अधिकारों को ध्यान में रखते हुए ऊँचे धरातल पर विचार करने की जरूरत है। इस तथ्य को कि अब तक ये लोग अन्याय सहते रहे हैं, आगे न्याय न मिलने के लिए समुचित कारण नहीं माना जा सकता है। इस संदर्भ में लोगों की यह मांग पूरी तरह से जायज है कि विस्थापन और पुनर्वास के व्यापक संदर्भ को देखते हुए सरदार सरोवर परियोजना की फिर से समीक्षा की जाय और जब तक एक ऐसी कार्ययोजना, जो कि लोगों को मेज़ूर हो, नहीं बन जाती है, परियोजना पर आगे काम न चलाया जाय जिससे कि वह परियोजना एक ऐसे स्थान पर न पहुँचे जहाँ से लौटने की गुंजाइश ही न रहे।

मैंने इस संबंध में प्रधानमंत्री जी को भी लिखा है और मध्य प्रदेश तथा गुजरात के मुख्यमंत्रियों से भी निवेदन किया है कि वे इस जन आंदोलन को जिसे लोग, मनुष्य के सबसे बुनियादी अधिकार अर्थात् ज़िंदगी के अधिकार के लिए चला रहे हैं, कानून और व्यवस्था या केवल कुछ तकनीकी या कानूनी सवाल के रूप में न लिया जाय वरन् उस पर संविधानिक व्यवस्था और व्यापक मानवीय मूल्यों के संदर्भ में विचार किया जाय। उनकी जायज मांग को अस्वीकार करना और उनकी सहमति के बिना उनको अपने परम्परागत रहवास से हटाने के लिए मजबूर करना, जिसमें आदिवासी समाज का विखराव और व्यक्ति के रूप में विभिन्नता अवश्यमावी है, संविधान के अन्तर्गत उनके अधिकारों की रक्षा-व्यवस्था का उल्लंघन होगा। मुझे उम्मीद है कि आप इस भूमिका को स्वीकार करेंगे और 19 तारीख को दिल्ली में होने वाली बैठक में सब मिलकर एक ऐसा समाधान खोज लेंगे जो कि न्यायसंगत हो और जिसमें मानवीय अधिकारों का पूरी तरह से संरक्षण हो।

## नर्मदा घाटी की सरदार सरोवर परियोजना से उत्पन्न समस्याओं के विषय में भारत के मा० प्रधानमंत्री को संबोधित डॉ० ब्रह्मदेव शर्मा, अनुसूचित जातियों तथा अनुसूचित जनजातियों के आयुक्त के अर्ध-शासकीय पत्र संख्या-25/5/90-आयुक्त दिनांक 17-4-90 की प्रतिलिपि

सबसे पहले तो मैं आपको 31 मार्च के राष्ट्रीय परिसंवाद और 14 अप्रैल के बाबा भीमराव अम्बेडकर की जन्म शताब्दी पर गरीबों के प्रति मन की गहराई से निकली ऋजु सरल संवेदना के लिए साधुवाद देना चाहूंगा। गरीबों के आसू हजारों साल की करुण व्याथा संजोये हुए हैं। जैसा आपने कहा था जब ये आसू महज पानी की बूंदें न रह कर तेजाब की धार बन जाते हैं तो वे इतिहास के पन्नों पर एक अमिट चिन्ह बना देते हैं। इसी तरह से जब गरीब के पेट की आग पेट से उठकर दिल और दिमाग पर छा जाती है तब अन्याय की नींव पर बने बड़े-बड़े किले भी ताश के पत्तों की तरह टूट जाते हैं।

आपको स्मरण होगा कि जब 31 तारीख को आदिवासी समस्याओं पर परिसंवाद की शुरुआत हो रही थी तब एक युवा विधायक ने, जो आपको अपना राजनीतिक गुरु मानता है, आपका ध्यान आदिवासी लोगों की सबसे बड़ी समस्या की ओर आकर्षित किया था। वह समस्या है इन सरल और अनजान लोगों से उनके जीवन का आधार छिन जाना। इस मामले में उसने नर्मदा की समस्या का विशेष उल्लेख किया था। आपने अपने भाषण में आश्वासन दिया कि कल्याण मंत्री उसे देखेंगे।

आज विहम्बना यह है कि यह अन्याय विकास के नाम पर हो रहा है। आदिवासी इलाकों में संसाधनों के परम्परागत उपयोग संबंधी अधिकार के मामले में स्थिति दिनोदिन बिगड़ती जा रही है। यह सुविदित है कि वनों के उपयोग के सवाल को लेकर कई इलाकों में राज्य और लोगों के बीच टकराव की स्थिति बन गई है।

दुर्भाग्य से विकास और विस्थापन से जुड़े हुए बुनियादी सवालों की ओर ध्यान नहीं दिया जा रहा है और उसे कानून और व्यवस्था का सवाल मानकर जो भी हल पाने के प्रयास हो रहे हैं उनसे स्थिति बिगड़ती ही जा रही है। विकास की परियोजनाओं के लिए जब सरकार संसाधनों को लेती है तो लोगों के परम्परागत अधिकार बिल्कुल अनदेखे कर दिये जाते हैं। पूरी कार्रवाई उनकी जिन्दगी के सवाल के बारे में बिना एहसास के ही की जाती है। जब आदिवासी से जमीन लेने की बात होती है तो सभी जगह आदिवासी यही कहता है कि रुपये लेकर वह क्या करेगा ? सच तो यह है कि विस्थापित समाज के रूप में विस्मरण और व्यक्ति के रूप में कंगाली की विभीषिका का सामना कर रहे हैं।

नर्मदा घाटी की समस्या के संबंध में मैंने एक विस्तृत पत्र 4 अप्रैल 1990 को लिखा था। उसमें मैंने यह स्पष्ट किया था कि विकास के लिए संसाधनों के वैकल्पिक उपयोग के लिए अपनायी जाने वाली आज की हमारी पूरी प्रक्रिया गैर-कानूनी है। यह कानून जिसके अन्तर्गत लोगों से उनके जीवन का आधार छीन लिया जाता है, हमारे संविधान की भावना के अनुरूप नहीं है। आदिवासी समाजों के बारे में मानवीय अधिकारों का उल्लंघन हो रहा है।

यह बड़े खेद की बात है कि विस्थापन के इस अहम सवाल पर जो आदिवासी समाज के भविष्य के लिए निर्णायक है, अभी तक किसी भी स्तर पर गंभीरता से विचार नहीं किया गया है। परन्तु अब लोगों में स्वयं नई चेतना आ रही है। प्रजातांत्रिक व्यवस्था की सबसे बड़ी ताकत है लोगों में आत्मनिर्भरता का जागरण और अस्मिता का एहसास। एक बार लोगों में यह एहसास हो जाय तो अन्याय बहुत दिन नहीं टिक सकता। पूरे आदिवासी क्षेत्र में खासतौर पर नर्मदा घाटी में यह एहसास तेजी से जग रहा है। इसलिए व्यवस्था के लिए जरूरी है कि वह इस बदलते परिवेश को पहचाने।

पिछले साल नर्मदा और विस्थापन के सवाल को लेकर मध्यप्रदेश के हरसूद नगर में एक विराट सम्मेलन हुआ था जिसमें देश के कोने-कोने से विकास परियोजनाओं से प्रभावित और मानवीय अधिकारों के प्रति दूसरे संवेदनशील लोग इकट्ठा हुए थे। इस सम्मेलन में विकास की वर्तमान अवधारणा जिसमें एक ओर व्यवस्था स्वयं गरीबी और विभिन्नता का निर्माण कर रही है और दूसरी ओर अमीरों के लिए अटाटूट विलास वस्तुओं से भरी वैभव नगरियां बन रही हैं जिनमें कहीं कोई ऊपरी सीमा ही नहीं दिखाई देती। इस सम्मेलन के बाद से नर्मदा घाटी का जन आंदोलन अब लोगों के जिन्दगी के अधिकार के लिए संघर्ष का प्रतीक बन गया है जिसे सही परिप्रेक्ष्य में देखना जरूरी होगा।

नर्मदा घाटी के लोग विस्थापन के लिए तैयार नहीं हैं। वे अपने घर छोड़ने के बजाय “जल समाधि” लेना अधिक श्रेयस्कर मानते हैं। उनका जन आंदोलन मध्यप्रदेश और महाराष्ट्र की पूरी घाटी में छा गया है। दोनों राज्यों के मुख्य मंत्रियों ने भी हाल ही में, नई सरकार बनने के बाद, आम आदमी की समस्या को गहराई और संवेदना के साथ समझने का प्रयास किया है। दोनों ने ही विस्थापन के मानवीय मुद्दे के सभी पक्षों को ध्यान में रखते हुए इस

परियोजना के समग्र पुनर्मुल्यांकन के लिए पहल करने का वायदा किया है। खास तौर से महाराष्ट्र के मुख्य मंत्री ने स्पष्ट रूप से यह आश्वासन दिया है कि जब तक लोगों की सहमति से पुनर्वास की व्यापक योजना नहीं बन जाती तब तक बांध पर ऐसा कोई भी काम नहीं होगा जिससे नदी के बहाव में रुकावट आये और लोग प्रभावित होने लगे।

इन आश्वासनों के बावजूद लोगों को इत्मीनान नहीं है। इनके सामने विस्थापन की विभीषिका मुंहवाये खड़ी हुई है। उनके नुमाइन्दे इस समय दिल्ली में घरना दे रहे हैं और 19 तारीख को नर्मदा परियोजना के मामले में उच्चस्तरीय निर्णय की प्रतीक्षा कर रहे हैं। मैं नर्मदा परियोजना के मामले में एक विस्तृत नोट संलग्न कर रहा हूँ जिसमें सभी पहलुओं पर विचार किया गया है।

मैं समझता हूँ कि नर्मदा के मामले में संकुचित सोच से ऊपर उठकर संविधानिक और मानवीय अधिकारों के संदर्भ में समग्रता से विचार करने की तत्काल जरूरत है। लोगों का जोरजबरदस्ती विस्थापन उनके मानवीय अधिकारों की अवहेलना है। इसीलिए मैंने पिछली रिपोर्ट में सिफारिश की थी कि लोगों के जीवन के अधिकार की लड़ाई में बल प्रयोग पर कानूनी निषेध होना चाहिए। क्या इन हँसी-खुशी से सादा जीवन बिताने वाले लोगों को विकास के वात्स्यायक में सूखे पेड़ के पत्तों की तरह बिखरने के लिए छोड़ा जा सकता है? मुझे खेद है कि अभी हाल ही में आंदोलनकारियों के खिलाफ बल का प्रयोग हुआ है जो गलत है। मैंने इस संबंध में मध्यप्रदेश के मुख्यमंत्री जी को लिखा है। मेरा आपसे भी आग्रह होगा कि यह सुनिश्चित करें कि विस्थापन के मामलों में परस्पर संवाद से समस्याएं सुलझाई जाय और किसी भी हालत में किसी भी तरह का बल प्रयोग न किया जाय।

नर्मदा घाटी की परियोजनाओं से दुनिया में सबसे बड़ा विस्थापन होने वाला है। परन्तु जैसा कि मेरे नोट से स्पष्ट है कि लोगों की सहमति से उनको स्वीकार्य पुनर्वास की योजना की बात तो बहुत दूर है विस्थापन के बहुत से साधारण पहलुओं पर भी नीतिगत निर्णय अभी बाकी है। ऐसी हालत में सरदार सरोवर के काम को चालू रखने का अर्थ यह होगा कि इस मानवीय समस्या का निदान बिना किए ही परियोजना ऐसे स्तर पर पहुँच जायेगी जहाँ से लौटना संभव नहीं होगा। उस हालत में लोगों के पास कोई विकल्प ही नहीं बचेगा और अपनी इच्छा के खिलाफ बरबस हटने के लिए मजबूर होना पड़ेगा। यही कहानी मध्यप्रदेश में नर्मदा नदी पर दूसरी दो परियोजनाओं बरगी और तवा की है जहाँ पर लोगों को मुआवजे के चन्द रुपयों के अलावा कुछ नहीं मिला है। इस संदर्भ में यह जरूरी होगा कि जब तक एक ऐसे पुनर्वास की योजना न बन जाय जो लोगों को स्वीकार्य हो ऐसा कोई काम न किया जाय जिससे कि यह परियोजना अवश्यंभावी हो जाय।

मैं आपका ध्यान इस ओर भी आकर्षित करना चाहूँगा कि यद्यपि इन परियोजनाओं से प्रभावित अधिकांश लोग आदिवासी हैं परन्तु इस उच्चस्तरीय समिति में कल्याण मंत्री नहीं हैं। मेरे विचार में कल्याण मंत्री उस समिति में होना चाहिए। इसके साथ ही आप नर्मदा फंदोल एथारिटी को उचित निर्देश देने की कृपा करें जिससे कि राज्य और लोगों, खासकर आदिवासियों, के बीच जिन्दगी के अधिकार को लेकर जो टकराव है वह खत्म हो जाय। मुझे विश्वास है कि सदिच्छापूर्ण वातावरण में ऐसा रास्ता ढूँढ़ा जा सकता है जिसमें लोगों के मानवीय अधिकारों की कद्र हो और वे इस स्थिति में पहुँचने के लिए मजबूर न हो जाय जिसमें उनके आँसू तेजाब बन जाय।

आदिवासियों के मामले में कई दूसरी समस्याएं भी हैं, जिनमें तत्काल कार्रवाई की जरूरत है। मुझे खुशी होगी यदि आप इन समस्याओं के बारे में बातचीत करने के लिए समय निकाल सकें।

## **A Note on Urgent Consideration of Some Basic Constitutional and Human Right Issues in relation to the Narmada Project**

### **Confrontation between the People and the State**

The continued confrontation between the people and the State on the issue of forced displacement in the Narmada Valley is a cause of deep concern which needs immediate consideration at the highest level. The situation may take a serious turn now that in some cases the State has not hesitated to use force. Any use of force by the State in a movement particularly of the tribal people and that too on the issue of displacement is denial of due protection accorded to them in the Constitution and violative of the human right, that is, the right to life.

### **Displacement remains a Non-Issue**

The question of displacement, particularly of the tribal people, in the wake of execution of developmental projects has not been considered so far with reference to certain basic principles involved such as (a) equity and justice, (b) safeguards provided for the tribal people in the Constitution and (c) the human rights as per the international conventions to which our country subscribes without any reservation. This question was discussed at length in my earlier Report (Twenty Eighth) which has not evoked any response so far from the Government in the State or the centre.

The woes of the tribal people, who are victims of some of the worst forms of backlash of development, have remained largely unheard. In many areas the people are facing disorganisation and destitution. The basic issues involved have been either overlooked altogether or dealt with in a self-rituous way. Development is sought to be deified and its consequences deemed as inevitable. The people have suffered in most cases in mute and bewildered silence. Sometimes they have also resisted the process in their own ways, but to no effect. In some cases when their defiance could not be ignored some patch ups have been attempted. But the end result in all these cases has been rather a 'mere pause in the process'. The system has always been able to use its resilience with purpose and to take advantage of the intrinsic weakness of the other side ignoring the merits of the cause and the inherent inequity.

### **Menacing Dimensions of Displacement**

Displacement, disorganisation and destitution of the tribal people are no longer isolated events. The number of projects and also their absolute size has continuously grown. The number of affected persons has assumed a menacing proportions. Moreover, as the facts about the fate of the people in different parts of the country is becoming better known, there is growing concern amongst many people other than directly affected who stand for equity and social justice. The affected people themselves are also coming together, considering the issues and questioning the processes which are responsible for their plight.

### **Violation of Law, Constitution and Human Rights**

It is now abundantly clear, as was brought out by me in my earlier Report, that in the case of most of the development projects even the spirit of the law under which the people are forced to move out from their homes is not followed. This renders the entire process illegal. The laws concerning the management of natural resources including acquisition of land are colonial in their mould and out of tune with the basic frame of our Constitution. The Land Acquisition Act is violative of the very basic right of the people, that is, the right to life. When the same law which is incongruous even in ordinary conditions is extended to the tribal areas, it is violative of the human rights of those people whose protection is a civilizational obligation and to which we as a nation are committed unequivocally.

## **Qualitative Change with People's Realisation of Basic Issues**

The projects in the Narmada Valley will cause displacement at a scale which is unprecedented in the history of the world. The people in the valley have resolved not to move out and prefer a 'watery grave' in their ancestral homes rather than face disorganisation as a community and destitution as individuals. This is not a plea of despondence; it is an assertion of people's will flowing from their self-realisation. They are now aware about the issues involved. They are confident about their stand—that the projects as they are being executed are against the law, that the law itself is violative of the fundamental rights and that as members of the tribal communities the State has an obligation to stand by them and provide full protection.

With these developments and growing consciousness amongst the people about the basic issues there is a qualitative change in the situation. It is like the people of a subject nation becoming aware about their state of subjugation. Freedom is a state of mind which can be said to have been achieved with the dawn of its realisation. The rest is merely an overt process. Once the realisation about freedom, or a state of inequity and injustice, dawns the things can never be the same again. It is only a question of time before they must end. The struggle of the people is only a part of this process which must be made as brief and also as painless as possible.

## **Some Dividends of Dialogue**

The dialogue about displacement in the context of Narmada Valley projects over a long period has already yielded some dividends. It is for the first time that rehabilitation has been accepted as a part of the project design itself even though with many a hitch, reservation and grudging consent under pressure from people and other agencies. The package of benefits promised to the people are now better than those adopted for other projects in the country so far. But in the changing context that is not enough. The basic issue which the people are posing now is about the very feasibility of satisfactory rehabilitation.

## **Pre-requisites for Satisfactory Rehabilitation**

There are four facets of a satisfactory rehabilitation planning, viz.,—

- (i) identification of all categories of project-affected people and a realistic assessment of the socio-economic impact, the real loss which the people will have to face due to the project,
- (ii) a common comprehensive policy for all project-affected which does not differentiate amongst the people from various States and which is not less favourable than the one promised under the Narmada Water Disputes Tribunal Award,
- (iii) a detailed plan ensuring that the requirement of basic resources for rehabilitation—land, money and organisation—is realistically assessed, clearly identified on the ground and provided for in the formal system, and
- (iv) involving the affected people and enlisting their willingness to accept the plan and, what is most important, their agreement to move out of their habitat.

## **People Question Feasibility of Satisfactory Rehabilitation**

The people hold that whatever may be the promise by the State, rehabilitation is not possible. It is also alleged that many other issues connected with this project have not been fully gone into which include environmental aspects, the implications for downstream economy, impact on health and the cost benefit itself. They are questioning even the benefits projected for the State of Gujarat which according to them are highly exaggerated. It is feared that while the massive investment may benefit a small tract which is already advanced, it may deny the other backward areas even the normal investments and thus add to inequitous growth. I will not touch upon all these issues but must mention that there are hardly any ex-post evaluation of different projects. In a number of cases the actual benefits are only a fraction of the initial estimates. Consequently the tail enders do not receive any benefits whose need is the most. Thus the parameters of projects change drastically without even being noted seriously by anyone.

## Utter Disregard of Human Issues

The primary reason for this sorry state is the great emphasis on engineering and expenditure aspects of these projects to the neglect of their real economics and utter disregard for the social implications. The stakes, social as also economic, involved in the Narmada Valley are much too high and the nation cannot afford to keep such a vital question of social equity unanswered before the die is cast finally about the mega projects.

## Comprehensive Plan of Rehabilitation not accepted even in Principle

I will confine myself to the issues relating to displacement and state of preparedness for handling the gigantic task of relocating the people and re-establishing them as communities sharing the benefits of development with others in recognition of their sacrifice which they may be obliged to make. I share the concern of the people about the feasibility of a satisfactory rehabilitation plan. There are promises galore but they are not substantiated by actual deeds. The preparation of a comprehensive plan of rehabilitation acceptable to the people is the minimum pre-requisite for approval of any development project which affects people and *de facto* deprives them of their means of livelihood-whatever may be the *de jure* position in this regard. It is unfortunate that this has not been accepted even as a principle notwithstanding the ready response about its desirability.

## Some Preliminary Issues remain unresolved

Consequently we are in a state of uncertainty even in relation to Sardar Sarovar let alone the general issue of the right to life of the people. This issue has caught the imagination of the people everywhere and the people are asking valid and pointed questions about the same which the state must respond. For example, in the case of Sardar Sarovar, I have been inviting attention of concerned authorities in the Centre and the concerned States to many specific problems which the tribal people are likely to face when they are displaced. But even the elementary questions such as computation of their real worth of their habitat in economic terms and the meaning of a reasonable standard in the new setting have not been attended to, let alone being announced. The conventional methodology is utterly unsuitable to deal with the tribal system. Consequently we may land up in a situation where our experts may conclude that the people after resettlement are better off yet they may face destitution and may be forced into wretched conditions in terms of their perception of life. This will be nothing short of a disaster for the affected people as has already happened in many other projects, notably Ukai which is in the same neighbourhood.

Even though long years have passed by in discussions and deliberations about Sardar Sarovar, the preparedness of States for tackling this gigantic problem has hardly improved. Even the first point in relation to the policies has not been fully settled so far. For example, even elementary issues may take years to resolve and yet some other uncertainty may appear or an earlier decision may be nullified by a simple explanatory note.

## Unjustified Differentiation

The first basic decision in the case of Sardar Sarovar should have been acceptance of a common package of all project-affected people irrespective of the State to which they belong and the State in which they may decide to settle. This has not been done so far. The concerned authorities may have valid reasons for not doing so. But to the simple tribal the State boundaries are unreal and he cannot understand any differential on that count. Consequently the definition of a project-affected persons is not the same in all States. The entitlement are not the same. Eighteen year old sons are accepted as constituting separate families in Gujarat but not so in Maharashtra. A landless person is entitled to hectare of irrigable land in Gujarat, one acre in Maharashtra and none in M.P. The figures about the affected people and also the area have been fluctuating.

What is most regrettable that no attempt has been made, nor even a promise given, that a comprehensive plan for resettlement will be prepared before the project becomes irreversible. The question of the peoples consent to the resettlement plan in this context therefore simply does not arise. Some villages have already been relocated and many others face forced displacement even as the preliminaries are not settled. This is resulting in avoidable hardship for many—but worst of all a loss of credibility of Government about their concern for the people's welfare.

## Land for Land—A Sore Point with the People

An important decision flowing from the Narmada Water Disputes award is a land for land, and more, that is, the land will be irrigable and each affected family will get a minimum of two hectares. Moreover the people will have choice with regard to their relocation and will be re-established as communities. But the vital question

which remains to be answered even now is the availability of land. After toying with the idea of Government and ceiling surplus land, the Govt. of Gujarat has finally settled for purchase of land through private negotiations with many a question mark such as how much land, at what cost—and the fate of the tiller of the land who would face a second displacement since the land on which he works today as landless labourer, originally belonged to him. Maharashtra has conceded that they do not have land for resettlement. M. P. which accounts for eighty percent of the project-affected is still without a comprehensive survey on land-availability in the state and has resorted to shifting the onus of resettlement to Gujarat.

### **Growing Realisation of People's Stand**

Nevertheless there is a silver lining. The logic of the people's demand in the valley has been conceded by the States of M.P. and Maharashtra which account for bulk of the project-affected population. I understand that the Chief Ministers of M.P. after a major demonstration in the valley has agreed to take up the question of complete reappraisal of the project with the Central Government. The Govt. of Maharashtra have also been expressing their grave concern about the possibility of some of their people getting affected without a resettlement plan getting ready even in general terms. Some activists and people likely to be affected during the coming monsoon had to resort to an indefinite hunger strike early this month against the continued construction of the dam. The Chief Minister of Maharashtra has promised to stand by the people and make a demand that no work on the dam site, which is likely to obstruct the flow of water in Narmada, should continue until such time as a resettlement plan acceptable to the people has been prepared by the State Government. The Chief Minister has visited the dam site and conveyed this decision to the representatives of Govt. of Gujarat.

### **Some Preconditions for ending Confrontation**

These promises by the two States are welcomed. But certain immediate steps are necessary. The preparation of a comprehensive plan acceptable to the people and not allowing the project to a stage of no return unless the first condition is satisfied are two crucial issues on which a categorical stand has to be taken first. Unless this is done the state of confrontation will continue with unpredictable consequences for the people and also the project.

### **Comprehensive Plan—The Need for a Broader National Perspective**

Coming to the question of a comprehensive resettlement plan acceptable to the people, I may emphasise that not only there are many an omission which must be made good and loose ends which must be tied but a broader view of the problem must be taken at the national level and also by all the three States without which much may not be achieved.

Take the simple question of a common policy for rehabilitation of all the project-affected people irrespective of the State to which they belong and the state in which they may finally get settled. The Govt. of Maharashtra is not prepared to accept the Gujarat package in full because it will create a precedent and similar demands may be made by the other project-affected people in the State as well which they are in no position to concede. The Govt. of M.P. also has not accepted that package particularly for the landless people, most of whom belong to the Scheduled Castes and Scheduled Tribes, because they want to have a built-in incentive for the people to opt for resettlement in Gujarat. The Govt. of Gujarat itself is not prepared to offer the package to all project-affected people even of Sardar Sarovar, let alone the affected people of other projects. For example, the people of six villages who were displaced some 28 years back for development of infrastructure for Sardar Sarovar have not been extended the same benefit even though promises have been made from the highest level in the State more than once. Similarly those who will be affected by establishment of the sanctuary to accommodate wild life displaced from the submergence area and construction of canals will not be eligible to the same benefits.

It appears that every State is prepared to concede something but nothing beyond the bare minimum which somehow can be used to get an agreement from the people to move out. The people suspect, for which there are reasonable grounds, that once the process starts they may be left alone to fend for themselves with nowhere to go. Some clever people may get some benefits but ordinary people may be left high and dry.

The inevitable conclusion is that the State and even the Central authorities have not as yet appreciated the spirit in which the whole question of displacement and resettlement has to be considered particularly in the context of tribal people whose habitat has the distinction of having the rich natural resources required for development projects. The facts that the people's rights were ignored and that they got a raw deal earlier, cannot be accepted as a ground for denying them their due in future or even in respect of the earlier projects now that the fact of inequitable deal to the tribal people is accepted by all. The principle of equity and justice cannot be determined on considerations of expediency. As I have been stressing the development cannot be at the cost of the weakest. An essential precondition of a development project being taken up in the tribal area must be the assurance of the people being accepted as the partners in the fruits of development. In fact the whole paradigm of development needs to be critically examined with reference to this basic premise of equity and justice to the people.

### **Equity—Not Legality—The Main Issue**

I will take this opportunity to appeal to the Prime Minister and also to the Chief Ministers of the three States to ensure that the concerned authorities rise above the frame of formality within which the issue of the people in the Narmada Valley is sought to be resolved. The guiding considerations have to be equity and justice and honouring the basic right of the people the right to life. It is clear that the law concerning acquisition of land is against the spirit of our Constitution. It is violative of the safeguards for the tribal people. Therefore, action of the State being in conformity with the provisions of this law cannot be accepted as a sufficient ground for forced eviction of the people from their habitat.

### **A Possible New Frame**

There are three basic elements which must be incorporated in any law which authorises the State an alternative use of natural resources. *Firstly*, the right of the people who subsist on those natural resources irrespective of the formal position in regard thereto, should be accepted unequivocally. *Secondly*, the people must not be deprived of their means of livelihood without their consent and without the provision of an alternative means of livelihood acceptable to them. *Thirdly*, whether the project for which the people are required to make a sacrifice will really serve public purpose must be determined in a larger forum which should include the people likely to be affected.

### **Forced Displacement of Tribal People—A Denial of Constitutional Safeguards**

In conclusion, the people's movement in the Narmada Valley against displacement and their resolve not to move out of their homes have raised some basic issues which must be considered at the highest level urgently. These issues include the design of development, inevitability of some sections of our people bearing the cost of development, the disregard of the right to life of the people and the Constitutional safeguards provided for the tribal people. Now that these issues have come to the fore, the process of forced displacement must stop forthwith. The State must not use force against the people who are fighting for their fundamental rights. In particular, a comprehensive review covering all aspects of displacement of the people by Sardar Sarovar must be ordered and the work on the project must stop until an agreement has been reached with the people about their future. Any action disregarding this demand will amount to denial of Constitutional safeguards to the tribal people. The same principle must be extended to all development projects being executed in the tribal areas at this critical juncture of their history so that they can become partners in development in keeping with the promise made by the founding fathers of our nation in the Constitution.

**Copy of letter dated 21-5-90 from Dr. B. D. Sharma,  
Commissioner for Scheduled Castes & Scheduled  
Tribes to the Prime Minister**

Kindly refer to my letter of 17th April and further developments on the issue of displacement particularly of the tribal people in Narmada Valley. I must first express my deep appreciation for the concern you have shown to the problems faced by the people, particularly the tribal people in the valley, and for giving the assurance to look into their problems at your level.

I am, however, concerned about the response of the Government of Gujarat. They have not taken this opportunity of resolving the issue through a dialogue with the people and arriving at a mutually agreed plan of action which appears to be possible now. Instead, the issue have given an emotional pitch by posing it as interests of Gujarat versus the interests of a limited number of people in the valley. This stance is rather ominous.

The issue of displacement, particularly of the tribal people is not merely that of a trade off between economic gains for many *versus* economic loss of a few. It concerns the right of life of the people and their survival as a community. There cannot be a trade off on these points particularly because this involves Constitutional safeguards and basic human rights. I am constraint to write to you at this point since this is not an isolated case. This represents a trend in our national life. I had referred to the question of conscious non-implementation of the law protecting tribal land in Andhra Pradesh and even an all party consensus reduction in favour of scrapping the same. This amounts to violation of Constitutional safeguards.

In my view a similar situation prevails in regard to developmental projects. The present procedure adopted in these cases is not only against the spirit of the law but the law itself is not been in consonance with the spirit of our Constitution. It is violative of human rights. In the case of tribal people it amounts to denial of safeguards by the State which has that responsibility under the Constitution.

In this context, you will appreciate that the issue of displacement cannot be considered merely in terms of the number of people benefited and the fact that there may be an all party consensus cannot be allowed to influence the decisions which have to be taken on objective consideration of equity and justice as enshrined in our Constitution. An amicable solution has to be found with full and free consent of the people. I hope these constitutional and human rights aspects shall be kept in view in deciding about any further course of action.

रविशंकर विश्वविद्यालय, रायपुर, मध्य प्रदेश में भारत में अनुसूचित जनजातों की वर्तमान स्थिति के बारे में परिसंवाद के अवसर पर आयुक्त का दिनांक 4 मार्च, 1990 को दिया गया भाषण

भारत में अनुसूचित जनजातियों की वर्तमान स्थिति : कुछ बुनियादी सवाल

अध्यक्ष महोदय तथा अन्य साथियों,

मुझे खुशी है कि हमारे देश में आदिवासी समाज की आज की हालत का जायजा लेने के लिए हम लोग यहाँ एकत्रित हुए हैं। हम आज अपने देश के आर्थिक-सामाजिक इतिहास के दौर में एक बड़े नाजुक दौर से गुजर रहे हैं जहाँ पर कुछ बुनियादी बातों की गहराई से, खासतौर से आदिवासी लोगों के विकास के संदर्भ में, समीक्षा करना निहायत जरूरी है। इसके लिए सबसे पहले हमें खुद आदिवासी समाज की आज की ऐतिहासिक स्थिति को समझना होगा। आजादी के बाद हम लोगों ने अपने देश की कृषि-प्रधान व्यवस्था को एक आधुनिक अर्थव्यवस्था के रूप में तब्दील करने का फैसला किया था। इस मामले में आमतौर पर यही धारणा रही है कि आधुनिक अर्थव्यवस्था में औद्योगिक गतिविधियाँ केन्द्र में होंगी।

विकास का नया संदर्भ और आदिवासी इलाके

इस फैसले का देश के विभिन्न क्षेत्रों तथा यहाँ के निवासियों के लिये दूरगामी परिणाम होना स्वाभाविक था। पहले की कृषि प्रधान व्यवस्था में हमारे देश में वे इलाके केन्द्रीय थे जहाँ अच्छी खेती हो सकती थी जैसे कि गंगा सिंधु का मैदान, दक्षिणी पठार में खेतों के लिए उपयुक्त अंचल और समुद्र के तटवर्ती मैदानी इलाके। इस अर्थव्यवस्था में पहाड़ और जंगल सीमांत के क्षेत्र थे। इसलिए इस व्यवस्था में इन मैदानी इलाकों में रहने वालों का वर्चस्व था और जंगल-पहाड़ों में बसने वाले लोग देश की आर्थिक-सामाजिक व्यवस्था के सीमांत पर ही बने रहे। ये इलाके बड़े ही दुर्गम भी थे। इसलिए उन लोगों की जिंदगी मैदानी इलाकों की जिंदगी से, कुछ थोड़ा बहुत सम्पर्क सूत्र होने के बावजूद, अलग-अलग जैसे बनी रही।

परन्तु देश में औद्योगीकरण की प्रक्रिया को तेज करने के फैसले के बाद उसके लिए जरूरी संसाधनों की खोज चालू हुई। जहाँ भी संसाधन उपलब्ध थे उन इलाकों को खोलने के लिए योजनाएँ बनीं। देश के औद्योगीकरण के लिए जितनी चीजें जरूरी थीं लगभग वे सब इन्हीं जंगल-पहाड़ों के क्षेत्रों से भरी पड़ी है - कहीं पर बहुमूल्य खनिज हैं, कहीं उपयोगी जंगल, कहीं पर गहरी घाटियाँ जिनमें पानी को रोककर बड़े बांध बनाकर सिंचाई और बिजली के लिए उपयोग किया जा सकता है। यह विपुल सम्पदा, जिसका अब तक कोई मूल्य नहीं था, नये संदर्भ में फ़ाफ़क बेशकीमती हो गई है। उसका दोहन आंचलिक क्षेत्रीय या राष्ट्रीय आर्थिकविकास के लिए जरूरी मान लिया गया है।

बुनियादी विसंगति

आदिवासी अर्थव्यवस्था के संदर्भ में यही एक दुर्भाग्यपूर्ण विसंगति पैदा होती है। आदिवासी इन्हीं संसाधनों से अपनी जिंदगी की जरूरतें पूरी करता है। वे उसकी जिंदगी का आधार है। उसके आर्थिक-सामाजिक संदर्भ में वही उन संसाधनों का उत्तमोत्तम उपयोग भी है। परन्तु आर्थिक-सामाजिक संदर्भ बदलने से व्यापक आधुनिक व्यवस्था के नजरिये में वह उपयोग अनुपयोग नहीं तो कम से कम बहुत ही अलाभकारी उपयोग करार दे दिया गया। इसके साथ ही यह भी मान लिया गया कि इन राष्ट्रीय संसाधनों का उस व्यापक संदर्भ में उत्तमोत्तम उपयोग ही राष्ट्रीय हित में है और उसके रास्ते में किसी दूसरे हित को न आने देना स्वाभाविक है और जरूरी भी। इस तरह आदिवासी अंचलों में एक विसंगति की स्थिति पैदा हो गई है।

अब तक इन समृद्ध संसाधनों वाले क्षेत्र में आदिवासी समाज के लोग हँसी खुशी जी रहे थे। परन्तु आज वही संसाधन नई अर्थव्यवस्था के लिए केन्द्रीय बन गए हैं और उनके बीच में रहने वाले ये सीधे-सादे लोग उनके उत्तमोत्तम उपयोग में बाधक हैं। इसलिए उनका अस्तित्व ही असंगत सा प्रतीत होता है और राष्ट्रीय विकास में बाधक साबित हो रहा है।

अगर किसी साधन का उसके वर्तमान उपयोग की तुलना में कोई अच्छा उपयोग हो सकता है तो स्वाभाविक रूप से यह अपेक्षा की जा सकती है कि अगर वहाँ के लोगों को उसका लाभ सबसे पहले न भी मिले तो कम से कम वे उसमें साझेदार तो जरूर होंगे। इस तरह की बात आदिवासी क्षेत्रों के विकास की नीतियों में भी बराबर दुहराई जाती रही है। परन्तु किसी भी नई अर्थव्यवस्था में सहभागिता के लिए नये तरह के कौशल ही नहीं बल्कि नये तरह की जीवनचर्या ही जरूरी हो जाती है। मानव सभ्यता के इतिहास में सामाजिक-आर्थिक व्यवस्था बहुत धीरे-धीरे ही आगे बढ़ती रही है। हर समाज को विकास की सीढ़ी में एक स्थिति से दूसरी स्थिति तक पहुँचने में काफी समय लगा है। इस साधारण गति से बदलाव की प्रक्रिया में भी कई जातियों को भारी कठिनाईयाँ आई हैं, यही नहीं, नई स्थितियों के साथ एकरस न हो सकने के कारण बहुत से समाजों को विनाश तक का सामना करना पड़ा है। अब यदि वही बदलाव जो दूसरे समाजों में हजारों या सैकड़ों सालों में धीरे-धीरे आया, जब किसी समाज और इलाके में कुछ दशकों में लाने की योजना बनाई जाय तो जाहिर है कि वह प्रक्रिया बड़ी तेज होगी और उसमें वहाँ के लोगों की भागीदारी कदाचित कठिन हो जाएगी। इसलिए बहुधा होता यही है कि ये लोग उन संसाधनों के अपने परंपरागत प्रयोग से वंचित हो जाते हैं और नई व्यवस्था में या तो वे शामिल ही नहीं हो पाते हैं और उन्हें वहाँ से हटकर दूसरी जगह आश्रय लेना पड़ता है अथवा उस व्यवस्था में बहुत ही असम्मानजनक और गिरी हुई स्थिति में रहने के लिए मजबूर हो जाना पड़ता है।

### सम्मान और व्यवस्था

दुर्भाग्य तो यह है कि आधुनिक व्यवस्था को आदिवासी समाज के लिए जिस असम्मानजनक स्थिति में रहने के लिए मजबूर होना पड़ रहा है, उसके बारे में कहीं कोई ग्लानि या अपराध की भावना तक नहीं। इसका मुख्य कारण यही है कि उनके नजरिये में आदिवासी लोग अभी "सभ्यता" से बहुत दूर हैं। वह आदिम स्थिति में रहने वाला एक अदना सा नाचीज व्यक्ति है। इसलिए जब उसे नई व्यवस्था में साधारण सी मजदूरी तक देने की बात की जाती है तो लगता है कि मानो उसके साथ उपकार किया जा रहा हो। उनको यह नहीं मालूम कि हर एक आदिवासी समाज, दूसरे समाजों की तरह ही अपने को दुनिया का एक अनूठा समाज मानता है, भगवान की एक अनुपम कृति मानता है और वे अपने इलाके में अपना कोई सानी हो सकता है इसे स्वीकार नहीं करता है। इस स्वाभिमान की व्यक्ति पर, जब नये समाज और व्यवस्था के सामने हाथ जोड़ने के लिए मजबूर हो जाना पड़ता है और उसके कृपादृष्टि पर निर्भर होना पड़ता है, क्या गुजरती होगी इसका कोई एहसास तक नहीं है। इसी स्ववर्गकेन्द्रीयता के कोहसे में नई व्यवस्था इन समाजों के बिखराव और विनाश के आधार पर नई अटलांतिकायें बनाने में कोई हिचकिचाहट नहीं महसूस करती। इस पहलू पर मैं यहाँ पर अधिक बात करना नहीं चाहूँगा।

### प्रक्रिया की अनिवार्यता

यह खेद है कि आदिवासी समाज की इस संक्रमण का बदलाव की स्थिति में गहराई से विचार तक नहीं किया गया है। इसलिये उसे बड़े ही हल्के फुल्के रूप में विकास की प्रक्रिया का एक अनिवार्य अंग जैसा मान लिया गया है जिसके बारे में उसके आगे कुछ नहीं कहा जा सकता है। इसके अलावा इस पूरी प्रक्रिया को वर्तमान कानून के दायरे में ही देखने के कारण, उसमें कोई अन्याय भी हो सकता है व्यवस्था के

कर्णधारों को इसका भी एहसास नहीं है। यदि इस मान्यता से कोई असहमति व्यक्त करता है तो या तो कानून की ओर इशारा करके उसको सही सिद्ध करने का प्रयास किया जाता है अथवा यदि तब भी समाधान नहीं होता तो अपनी मजबूरी बताकर संसद और विधानसभा की ओर इशारा कर दिया जाता है। और विकास का पीहिया यथावत् घूमता रहता है। इस प्रक्रिया में जिन लोगों को कीमत चुकानी पड़ती है उनकी दयनीय स्थिति को देखकर अनुग्रह के रूप में कुछ समाधान करने का भी प्रयास किया जाता है। यदि लोग उसकी विसंगति को लेकर या उसकी गैरइंसाफी के बारे में कोई उज्र करते हैं तो उसे विकास-विरोधी रूप में प्रस्तुत करने का प्रयास किया जाता है। इसके साथ ही यह तर्क भी दे दिया जाता है कि इन लोगों को जो कुछ उनके लिये किया जा रहा है उसके लिए व्यवस्था के प्रति शुक्रगुजार होना चाहिये क्योंकि कानून में तो उसकी भी कोई व्यवस्था नहीं है। यह तो व्यवस्था की सदाशयता है कि वह उनकी कठिनाईयों को देखकर उसका उपचार करने की कोशिश तो कर रही है।

आज की इस खेदजनक ही नहीं अमानवीय स्थिति का मूल कारण यही है कि आजादी के बाद हमने कुछ आधारभूत बातों की ओर ध्यान ही नहीं दिया जिसके कारण आज की औपचारिक व्यवस्था और हमारी राष्ट्रीय आधारभूत मान्यताओं में न केवल विसंगति है वरन् एक बड़ी खाई बन गई है। इस विसंगति का न केवल आदिवासी लोग ही शिकार हैं वरन् देश के बहुसंख्यक लोग उसकी चपेट में आ गये हैं, आते जा रहे हैं। इस विकास प्रक्रिया के हामी उसको विकास की अनिवार्य शर्त कहकर या विकास की कीमत का बहाना करके उसकी ओर से नजर फिरा लेते हैं। विकास का वर्तमान रूप आम आदमी के लिए इतना भयावह हो गया है कि मूल स्वरूप को देखने और उन विसंगतियों को अपने सही रूप में पहचानने की भी जरूरत है।

### अंग्रेजी राज घातक प्रहार ----

हमारे देश में आम आदमी के अधिकार पर सबसे पहला घातक प्रहार अंग्रेजों के जमाने में तब हुआ जब अंग्रेजों ने अपने देश में प्रचलित भूमि सहित प्राकृतिक सम्पदा की सम्पत्ति रूप की मान्यता हमारे देश पर थोपी थी। इसके फलस्वरूप जमीन पर जमींदारों का अधिकार हो गया और वनों पर सरकार ने अपना अधिकार कर लिया। हमारे देश की परम्परा के मुताबिक आदमी का जमीन से नाता माँ और बच्चे जैसे होता है। धरती माता है जिससे वह अपना पोषण पाता है वह उसकी सम्पत्ति नहीं हो सकती। आदिवासी इलाकों में तो नये कानूनों के बावजूद यही मान्यता अभी तक चली आ रही है। उसके लिए उसका वन और जमीन उसकी माँ है। अंग्रेजों ने जंगल और जमीन को सम्पत्ति मानकर जो कानून बनाये उनसे जमीन को जोतने वाले किसान और, वनों के सहारे जीने वाले आदिवासी अधिकारहीन हो गये। जमीन और जंगल बाजार में बिकने की वस्तुएं बन गई जो रुपये पैसे से खरीदी जा सकती थीं। कर्ज या लगान न अदा करने की हालत में जिन्हें नीलाम किया जा सकता था। इसी तारतम्य में अगर सरकार को किसी काम के लिए किसी भू-खण्ड की जरूरत पड़ती तो उसे कुछ पैसे देकर खरीद लेने का हक था। जिस आदमी की उससे आजीविका चल रही है उसका क्या होगा इससे उस कानून को कोई मतलब ही नहीं था। सच तो यह है कि अंग्रेजों ने जिनके नाम जमीन और जंगल लिख दिए थे उनके लिये वे आजीविका के साधन थे ही नहीं, उनके लिये वे साधारण सी सम्पत्ति थे और इसलिए उनकी खरीद-फरोख्त होती रही। इस हालत में उन पर गुजर बसर करने वाले किसान और आदिवासी को या तो नये मालिकों से समझौता कर लेना पड़ता था या फिर वहाँ से हटने के लिए मजबूर होना पड़ता था। इस विभीषिका को या तो उन्होंने तकदीर की बात मानकर सहन कर लिया और कहीं-कहीं कड़ा विरोध भी किया। यह विरोध विद्रोह बन गया। परन्तु सरकार की ताकत के सामने आखिर में उनको हार माननी ही पड़ी और कई स्थिति से समझौता करके किसी तरह गुजर-बसर करने के लिए मजबूर हो गए।

## आजादी के बाद का बदलाव

हमारे देश में आजादी के बाद एक बुनियादी बदलाव आया। हमने उपायनवेशवादी और सामंतवादी व्यवस्था को उखाड़कर समता, न्याय और भाईचारे के नये मूल्यों पर आधारित एक नये समाज के निर्माण के लिये संकल्प लिया। इस सपने को साकार करने के लिए हमने अपना संविधान बनाया जिसमें इन मूल्यों को स्थापित किया। हमारे संविधान की मूल चेतना उसकी प्रस्तावना में मुखरित हुई है। उसको मूर्त रूप देने के लिए एक ओर राज्य के संचालन के लिए दिशा-निर्देशक सिद्धांत बनाये गये और दूसरी ओर सामान्य नागरिक के मूलभूत अधिकारों को भी परिभाषित किया गया। संविधान के इन उद्देश्यों का राज्य समुचित रूप से पालन करता रहे इसके लिए उपयुक्त संस्थाओं की भी व्यवस्था की गई। इन्हीं मूल उद्देश्यों की प्राप्ति के लिए हमने अपने देश में नियोजित विकास का रास्ता भी अपनाया था।

## आदिवासी समाज के लिए विशेष व्यवस्था

आदिवासी समाज की विशेष स्थिति का भी हमारे संविधान में भरपूर ध्यान रखा गया है। इस मामले में सबसे महत्वपूर्ण उद्देश्य यही था कि जहाँ एक ओर अन्य सभी लोगों की तरह आदिवासियों को भी नये विकास की यात्रा में सहभागी बनाने का पूरा-पूरा अवसर मिले यह सुनिश्चित किया जाय, वहीं यह भी ध्यान रखा जाय कि संक्रमण के दौरान की उस तेज दौड़ में उन्हें भटकाव का सामना न करना पड़े। उनकी नितांत भिन्न स्थिति को देखते हुए यह भी डर था कि कहीं समान व्यवहार के सिद्धांत की रूढ़ि से उनके साथ अन्याय न हो जाय। असमान स्थिति में समानता के अधिकार का दावा ही अन्याय के लिए सबसे महत्वपूर्ण कारक बन सकता है। इसलिये आदिवासियों के हितों की रक्षा के लिये संविधान में विशेष और पूरी-पूरी व्यवस्था की गई।

हमारी नई व्यवस्था का आधार है कानून। अंतिम विश्लेषण में कानून समाज की स्थिति और उसकी आकांक्षाओं का प्रतीक होता है। इसलिये अगर आदिवासी इलाकों की नितांत भिन्न स्थिति और उनकी अलग परम्पराओं को ध्यान में न रखकर वहाँ पर भी पूरे देश या राज्य के लिये बनाया गया कोई कानून लागू कर दिया जाय तो कुछ हालतों में वह उनके लिए अहितकारी ही नहीं घातक भी साबित हो सकता है। हमारे संविधान निर्माताओं ने इस संभावना को नजरअंदाज नहीं किया। इसीलिए संविधान की पंचम और छठी अनुसूची में ऐसी व्यवस्था की गई है जिससे कि उन इलाकों पर लागू होने वाले कानून उनकी आर्थिक सामाजिक स्थिति के अनुरूप हो और उनके हित का पूरा-पूरा संरक्षण हो सके। इस उद्देश्य के लिए हमारे संविधान में ऐसी व्यवस्था भी की गई है जिससे इस उद्देश्य को पूरा करने के लिये अगर जरूरत हो तो नागरिकों के मूलभूत अधिकार में भी अपवाद किया जा सके। इस तरह आजादी के बाद की व्यवस्था में देश की तरक्की के साथ आदिवासी लोगों सहित समाज के सभी अंग सहभागी के रूप में आगे बढ़ सकें यह सुनिश्चित करने का पूरा-पूरा प्रयास किया गया।

## आदिवासी समाज की स्वशासी व्यवस्था की अवमानना और पूरे समाज का अपराधीकरण

में ऊपर बताये गये संविधानिक व्यवस्था के दो महत्वपूर्ण पहलुओं की ओर विशेषरूप से ध्यान आकर्षित करना चाहूँगा जो आदिवासी लोगों की वर्तमान व्यवस्था और उनके विकास के लिए निर्णायक है। पहला है आदिवासी समाज की स्वशासी व्यवस्था और दूसरा है संसाधनों पर अधिकार एवं उसका उपयोग। आदिवासी समाजों में स्वशासी व्यवस्था की परंपरा अभी तक बनी हुई है। जैसा कि ऊपर बताया गया है कि संविधान में यह अपेक्षा की गई थी कि नई औपचारिक व्यवस्था इन समाजों की व्यवस्था के अनुरूप ढाली जायेगी। परन्तु ऐसा हुआ नहीं जिसका भारी दुष्परिणाम हुआ है। आदिवासी समाजों पर बाहरी औपचारिक व्यवस्था के

थोपे जाने से पूरे समाज का अपराधीकरण हो गया। वनों का आरक्षण तो अंग्रेजों के जमाने से ही हो गया था जिसके कारण वे वन, जो आदिवासी समाज के लिए सनातनकाल से उनका अपना घर थे, उनके लिए ध्वस्त हो गए, उन्हें वहाँ रहने का अधिकार तक नहीं रहा। जमीन के बारे में नये कानून बन जाने से, जिसके मुताबिक जमीन की मिल्कियत उसी व्यक्ति की मानी जाती है जिसका नाम सरकारी कागज में दर्ज हो, वदून से मामलों में आदिवासी अपना अधिकार भी नहीं स्थापित कर सका। कागजों की दुनिया से परेशान लोगों ने इस स्थिति का भरपूर फायदा उठाया और उनकी जमीन पर अपना अधिकार कायम कर लिया। यही नहीं, नई व्यवस्था में सब वही है जो कागज पर लिखा हुआ है। इसलिए अगर कहीं आदिवासी ने किसी कागज पर अँगूठा लगा दिया तो उसकी देनदारी भाग्य की लकीर की तरह कायम हो गई। इस कानून और कागज की दुनिया में उसको अपनी रक्षा करना भी मुश्किल हो गया। उसके लिए भी उसे किसी अदालत या किसी सरकारी दफ्तर के दरवाजे खटखटाना जरूरी है।

यही नहीं, उसकी अपनी सामाजिक परंपरा अगर कानून से अलग है तो भी वह अपराधी बन गया। उन राज्यों में जहाँ सरकार मधनिषेध की हामी है, आदिवासी के लिये परम्परा के मुताबिक पूजापाठ के अक्षर पर भी मद्य का उपयोग अपराध हो जाता है। और जो सरकारें नागरिकों को पीने की स्वतंत्रता देती हैं वे भी आदिवासी को अपनी परंपरा के मुताबिक मद बनाकर पीने को अपराधी मानती है। हर हालत में आदिवासी कानून का उल्लंघन करते हुए ही दिखाई देता है जिसके बारे में उसको पूरा एहसास भी नहीं है। इस तरह वह नई व्यवस्था के सामने लाचार है। नई व्यवस्था का छोटे से छोटा अदना कर्मचारी भी उसको किसी भी कानून के उल्लंघन के लिए सरकार के सामने हाजिर कर सकता है। कैसी विडम्बना है कि आदिवासी लोगों के सम्मेलनों में आजादी के तैंतालीस सालों के बाद भी यह मांग की जाती है कि "कोई हमारे घर में न घुसे" और "हमारी झोपड़ियाँ न तोड़ी जायें, न जलाई जाँयं।" किसी भी पैमाने पर किसी समाज या किसी राष्ट्र के लिये यह हालत खेदजनक ही नहीं शर्म की बात है। दुर्भाग्य से संविधान के निर्माताओं ने राज्यपालों को जो अधिकार दिये थे उनका उपयोग ही नहीं किया गया। इस व्यवस्था के तहत किसी भी कानून को, चाहे वह केन्द्र ने बनाया हो, या राज्य ने, पुराना हो या नया, आदिवासी व्यवस्था की जरूरतों के अनुरूप ढाला जा सकता था जिससे कि वे अपनी परंपरा के मुताबिक अपना काम करते रहें और धीरे-धीरे विकास की दौड़ में सहभागी बन सकें। इसके लिये राज्यपाल को केन्द्र की अनुमति तक की दरकार नहीं है - एक सादा सा आम इशतहार निकाल कर सर्वसत्तावान संसद का कानून भी अनुसूचित क्षेत्रों के लिये नकारा जा सकता है, उसे बदला जा सकता है। इतने निरापद अधिकार तक का उपयोग न होने का पूरा जोखिम आदिवासी समाज को उठाना पड़ रहा है, यह सरासर अन्याय है।

### संसाधनों पर अधिकार और उनका उपयोग

इस हालत में जहाँ आधुनिक राज्य की नई व्यवस्था के द्वारा आदिवासी समाज की अपनी स्वशासी व्यवस्था पूरी तरह से नजरअंदाज कर दी गई है, उसकी स्थिति निहायत कमजोर होगी। इस कमजोरी की हालत में भी शायद आदिवासी अपना काम चलाता रहता अगर इन इलाकों में कानून की साया में उनके मूलभूत अधिकारों की तथाकथित विकास के नाम पर अदहेलना न की गई होती, कुचला न गया होता। इसके साफ करने के लिए हमें फिर से एकबार संविधानिक व्यवस्था और आधारभूत मान्यताओं का गहराई से परीक्षण करना होगा।

### जमीन के दो अलग रूप- सम्पत्ति और ज़िंदगी का आधार

जैसा मैं पहले कह चुका हूँ अंग्रेजों ने हमारे देश में भूमि सहित प्राकृतिक संसाधनों को सम्पत्ति रूप

माना और उस जमाने के सभी कानून उसी आधारभूत मान्यता पर बनाए गए थे। परन्तु इस मामले में हमारे संविधान में आधारभूत मान्यतायें नितान्त भिन्न हैं। यही नहीं, जमीन सहित प्राकृतिक संसाधनों का सम्पत्ति रूप मूलतः सामंतवादी सोच का अंग था जो हमारे संविधान की मूल चेतना से असंगत था।

आजादी के बाद हमने सिद्धांत रूप से यह स्वीकार किया था कि जमीन जोतने वाले की होगी। उस पर जोतने वाले के अलावा और किसी का अधिकार न हो इसलिए पहले तो राजाओं की रियासतें, जागीरदारों की जागीरें, जमीनदारों की जमीनदारियां कानूनी रूप से खत्म कर दी गईं। यही नहीं भूमि के अधिपत्य पर भी सीमा लगा दी गई। दूसरी ओर ऐसे भी कानून बनाये गये जिससे जमीन पर जोतने वाले का हक बन जाय। यह जरूर था कि क्रांति पर आधारित व्यवस्था बदलाव की तरह एक झटके में ही सामंतवादी व्यवस्था को पूरी तरह से निर्मूल नहीं किया गया था। इसलिये संविधान लागू होने के बाद बने कानूनों के तहत भी कुछ लोगों के पास इतनी जमीन हो सकती थी जिसे वे अपने आप न जोत सकते। परन्तु इस मामले में भी यह स्पष्ट था और उम्मीद यह की गई थी कि धीरे-धीरे हमारे देश में वह स्थिति आ जायेगी जिसमें जमीन जोतने वालों की ही बनकर रह सकेगी।

जमीन उसकी जो जोते इस सिद्धांत का एक महत्वपूर्ण निहितार्थ यह है कि जमीन सम्पत्ति नहीं है, वह आजीविका का साधन है। परन्तु उस हालत में जब किसी व्यक्ति के पास जमीन इतनी हो जिसे वह खुद जोत न सके तो उसमें कुछ न कुछ सम्पत्ति के गुण बचे ही रहते हैं। इसके साथ ही दूसरी ओर हमारे संविधान में शुरू में सम्पत्ति को एक मूलभूत अधिकार माना गया था। परन्तु इस मामले में एक बात और भी हुई। जमीन के मामले में जब तक सिद्धांतों की बात होती रही तब तक किसी को कोई उज्र नहीं हुआ। परन्तु अंग्रेजी राज के दौर में जिन लोगों के जमीन पर अधिकार स्थापित हो चुके थे जब उन पर आंच आने लगी तो कुछ अकुलाहट हुई। इन निहित स्वार्थों ने औपचारिक व्यवस्था के भीतर और व्यवहार रूप में उसके बाहर भी आजादी के बाद की मूल भावना के प्रतिकूल अपने हितों के बचाव के लिए रास्ते खोजना शुरू किये इस तरह नई व्यवस्था में जमीन की सही प्रकृति के बारे में विवाद खड़ा हो गया और इस महत्वपूर्ण मामले में स्थिति अस्पष्ट होने लगी। परन्तु इसके बावजूद सुधारवादियों का पलड़ा भारी रहा और इस मामले में स्पष्टता लाने के लिये हमारे संविधान में कई संशोधन किये गये। इन संशोधनों में एक तो सम्पत्ति के बारे में नागरिक के मौलिक अधिकार के रूप में मान्यता खत्म कर दी गई दूसरे सम्पत्ति के अधिग्रहण के लिये यह जरूरी नहीं माना गया कि उसके मुआवजे के रूप में बाजार मूल्य दिया जाय। राज्य जितना मुआवजा उचित समझे उतना मुआवजा देकर सम्पत्ति का अधिग्रहण कर सकता है यह अधिकार भी संविधान में शामिल कर दिया गया। इसके अलावा भूमि सुधार से संबंधित सभी कानूनों को भी नवीं सूची में शामिल करके विशेष रूप से सुरक्षा की गई जिससे कि निहित स्वार्थ इन मामलों को न्यायालयों में न घसीट सके और लोगों को उनके मूलभूत अधिकारों से वंचित न रखा जा सके।

जहां सम्पत्ति के बारे में हमारे संविधान में इस तरह से स्थिति स्पष्ट होती गई वहीं दूसरी ओर जीवन के अधिकार के बारे में भी स्पष्टता होती गई। हमारे संविधान के अनुच्छेद 21 के अंतर्गत हर नागरिक को जीने का और स्वतंत्र रहने का अधिकार स्थापित है। इस संबंध में हमारे न्यायालयों ने यह स्पष्ट किया कि प्राणियों के जीवन का अधिकार केवल एक प्राणी के रूप में जीते रहने तक ही सीमित नहीं है वरन् उसका अर्थ है मानवीय प्रतिष्ठा के साथ जिंदगी बसर करना। जीवन के अधिकार के बारे में न्यायालयों की व्याख्या से राज्य भी सहमत ही रहा है।

इसके अलावा अनुच्छेद 39 में राज्य के दिशानिर्देशक सिद्धांतों में सभी नागरिकों के लिए जीविका के उपयुक्त साधन प्राप्त करने को अधिकार के रूप में स्वीकार किया गया है। इसी अनुच्छेद में यह भी निर्दिष्ट किया गया है कि समाज के भौतिक संसाधनों का नियंत्रण और उनकी मिलकियत इस तरह से बांटी जाएगी

जिससे कि सामूहिक हित अधिक से अधिक सध सकें. अंत में राज्य से यह भी अपेक्षा की गई है कि वह आर्थिक व्यवस्था को इसप्रकार से चलाएगा जिससे कि धन और उत्पादन के साधनों का सामान्य हित की अवहेलना करते हुए केन्द्रीयकरण न हो.

### आजीविका के साधन के अधिग्रहण की विसंगत स्थिति

भूमि सहित प्राकृतिक संसाधनों के जीवन के साधन के रूप में स्वीकृति, सम्पत्ति के अधिकार की समाप्ति जीवन के अधिकार की मानवीय व्याख्या, आजीविका के उपयुक्त साधन के अधिकार, इत्यादि, के बारे में इन संविधानिक व्यवस्थाओं के बावजूद पुरानी मान्यताओं के मुताबिक कानून में भूमि का सम्पत्ति रूप ही प्रमुख बना रहा जिसके दुष्परिणाम आदिवासी समाज को झेलने पड़े हैं. ये दुष्परिणाम धीरे-धीरे और भी गहराते जा रहे हैं. जैसा कि मैं पहले कह चुका हूँ भूमि सहित प्राकृतिक संसाधनों से आदिवासी समाज अपनी परंपरागत तौर-तरीकों से ज़िंदगी बसर करता रहा है. परन्तु नई स्थिति में उनके द्वारा संसाधनों का वह उपयोग असंगत माना जाने लगता है. उन संसाधनों पर राज्य के अधिकार की जकड़ कड़ी होती जा रही है. दुर्भाग्य से खेतीकी जमीन पर जोतने वाले का अधिकार स्वीकार करके उसको आजीविका का साधन मानने की ओर कुछ कदम तो उठाए गए परन्तु उसका सम्पत्ति रूप बना ही रहा. संविधान में संशोधन करते समय भी जब राज्य के द्वारा सम्पत्ति को अधिग्रहण करने के लिए नया प्रावधान अनुच्छेद 31 क१ बनाया गया तो उसमें अधिकतम सीमा से कम की जमीन के अधिग्रहण को पहले तो अपवाद बनाया गया जिसका अर्थ यह था कि जीविका के साधनों को राज्य नहीं ले सकता. परन्तु उसके तुरंत बाद उसी अनुच्छेद में यह व्यवस्था कर दी गई कि अधिकतम सीमा से कम जमीन होने की हालत में उसे बाजार मूल्य देकर अधिग्रहण किया जा सकता है. यही पर अनजाने में एक बहुत बड़ी भूल हो गई है जिस पर विचार करने के लिए हमें इतिहास में कुछ पीछे जाना होगा.

आजादी के पहले उन्नीसवीं सदी में तत्कालीन व्यवस्था के तहत जमीन के अधिग्रहण के लिए जो भूमि अधिग्रहण कानून बनाया गया उसके अंतर्गत जमीन का मुआवजा देकर उसे लेने का व्यवस्था की गई थी. उससमय चूँकि भूमि पूरी तौर से सम्पत्ति के रूप में ही मानी गई थी इसलिए इसमें कोई विसंगति नहीं थी. अगर राज्य को कहीं भूमि की जरूरत थी तो वह उसके जमीनदार से उसकी सम्पत्ति को मुआवजा देकर ले सकता था. परन्तु आजादी के बाद जमीन की अवधारणा के मामले में जो बुनियादी बदलाव आया वह लगता है कि अनदेखा रह गया जिसके कारण यह विसंगति चली आ रही है. जिस संविधान में नागरिक के जीवन का अधिकार स्थापित हो और उसके लिए आजीविका के उपयुक्त साधन का अधिकार भी मान्य हो उस संविधान के तहत किसी व्यक्ति को उसकी आजीविका के साधन से महज कुछ धन देकर छीना नहीं जा सकता. इसलिए ऐसा कानून जिसके अंतर्गत व्यक्ति के जीवन का आधार समझा जा सकता हो, संविधान की भावना के अनुरूप नहीं हो सकता है, ऐसा कानून उसका स्पष्ट उल्लंघन है.

### आदिवासी व्यवस्था पर विसंगति कानून का दुष्प्रभाव

कानून और संविधान की यह स्थिति साफ होने के बाद हम एक बार फिर से आदिवासी समाज की स्थिति पर नजर डालेंगे. विभिन्न आदिवासी समाज इस समय विकास के विभिन्न चरणों पर अवस्थित हैं. कुछ थोड़े से ऐसे समाज हैं जो अभी भी आखेट और संग्रह की स्थिति में हैं. ये लोग पूरी तरह से जंगलों पर आश्रित हैं और जंगल ही उनकी ज़िंदगी है. कुछ लोग इस स्थिति से आगे बढ़कर पशुपालन और स्थाई खेतीकी शुरुआत की स्थिति में पहुँच गये हैं. इन लोगों की भी ज़िंदगी का एक बहुत बड़ा हिस्सा वनों पर आधारित है. अधिकांश आदिवासी समाज अब स्थाई खेती कर रहे हैं. परन्तु ये लोग भी अपनी ज़िंदगी की बहुत सी

जरूरतों के लिए अभी तक वनों पर ही निर्भर हैं. इस तरह पूरा आदिवासी समाज अपनी आजीविका के लिए भूमि सहित प्राकृतिक संसाधनों पर कमोवेश सीधे निर्भर हैं.

उद्योगों की स्थापना तथा आधुनिक विकासके अन्य क्रियाकलापों के लिए आदिवासी इलाकों में स्थित संसाधनों की राज्य की जरूरत है. आजादी के पहले के कानून के मुताबिक वन राज्य की सम्पत्ति हो गये थे और जमीन जमींदारों की सम्पत्ति बन गई थी. आजादी के बाद साधारण किसानों को तो कुछ न्याय मिला हालांकि पूरा नहीं. परन्तु आदिवासी स्थिति की विसंगतियाँ अनदेखी ही बनी रहीं. उनको उनके ज़िंदगी के साधन खास तौर पर वनों के उपयोग से अलग करने की जो प्रक्रिया अंग्रेजों के जमाने में चालू हुई थी आजादी के बाद उसमें ठहराव नहीं आया बरन् वह और भी तेज होती गई. इस तरह दुर्भाग्य से स्याई खेती के अलावा दूसरे प्राकृतिक संसाधनों को, जो आदिवासी की ज़िंदगी का आधार थे, राज्य की सम्पत्ति मान लिया गया और उन पर लोगों का अधिकार मान्य नहीं किया गया. इस कारण खेती के अन्य संसाधनों के संबंध में जो लोगों के मूलभूत अधिकार बनते थे वे अनदेखे ही रह गए. यही नहीं, इस व्यवस्थामें भूमि और वनों के परम्परागत उपयोग तक को अमान्य करार दे दिया गया और स्वयं लोग कानून की निगाह में अपराधी बन गए. उधर जमीन के मामलों में भी सम्पत्ति का कुछ रूप बने रहने से, उसके अधिग्रहण के लिए जो असंगत कानून था उसमें भी फेरबदल नहीं हुआ. राज्य को उस कानून के तहत लोगों से उनके ज़िंदगी के साधन छीन लेने का अधिकार बना रहा. ये दोनों ही स्थितियाँ हमारे संविधान की भावना के अनुरूप नहीं हैं. परन्तु फिर भी विकास का नया दौर इसी कानून के तहत चल रहा है.

विकास के नये दौर में अपने प्राकृतिक संसाधनों के कारण धीरे-धीरे आदिवासी क्षेत्र देश की व्यवस्था में केन्द्रीय बनते जा रहे हैं. राष्ट्रीय विकास के लिए आदिवासी क्षेत्रों में उपलब्ध लगभग सभी वस्तुओं की जरूरत है. जब राज्य को संसाधनों की जरूरत होती है तो जाहिर है कि वह कानून के मुताबिक उसका अधिग्रहण करेगा. कानून के मुताबिक आदिवासी को अपने परिदेश में खेती की जमीन के अलावा किसी पर कोई अधिकार नहीं है. खेती की जमीन पर भी उसका कानूनी अधिकार हो इसकी भी कोई खातरी नहीं है. इस हालत में जब विकास के लिए इन इलाकों के संसाधनों के उपयोग की जरूरत होती है तो आदिवासी अपने जीवन के अधिकार से या तो बिना कुछ लिये-देये ही वंचित कर दिया जाता है और अगर उसका कुछ थोड़ा बहुत अधिकार मान भी लिया गया तो उसे कुछ पैसे देकर छोड़ देने के लिए मजबूर कर दिया जाता है. यहीं पर आकर संसाधनों के बारे में आदिवासी समाज और नई व्यवस्था में बुनियादी अंतर साफ हो जाता है और उसका परिणाम आदिवासी समाज के लिए घातक होता है.

आदिवासी उन प्राकृतिक संसाधनों को, जो उसकी ज़िंदगी का सहारा है, सम्पत्ति नहीं मानता है. वह अपने शब्दों में राज्य की उस मान्यता का, जिसमें वह उसको सम्पत्ति मानकर उससे च्युत किया जा सकता है, अपने तौर पर प्रतिवाद भी करता है. परन्तु उसकी बात आज के कानून में मान्य नहीं है. सच तो यह है कि उसकी अपनी व्यवस्था ही अमान्य है. इसलिए उसका कथन अनसुना ही रह जाता है और नई व्यवस्था अपने कानून के मुताबिक आगे बढ़ती जाती है. इसका एक ही अंसर होता है और वह यह कि आदिवासी अपने जीवन का आधार खो बैठता है और वह निराधार होकर झरझर भटकने के लिए मजबूर हो जाता है. इस प्रक्रिया में अब तक 10 से 15 प्रतिशत तक आदिवासी अपने जीवन का आधार खो बैठे हैं. आदिवासी के अधिकार को कानूनी मान्यता न होने से उसे इतना गया गुजरा समझा जाता रहा है कि सरकार ने इतना तकजरूरी नहीं समझा कि कम से कम यह हिसाब तो लगा लिया जाता है कि कितने आदिवासी विकास की चपेट में आकर अपनी आजीविका खो बैठे हैं और निराधार हो गये हैं. सरकारी आंकड़े इस विसंगति को और भी साफ करते हैं. बस्तर के बैलाडिला की विशाल परियोजना के बनाने के लिए आंकड़ों के मुताबिक 20 से

कम परिवार ही विस्थापित हुए। यह अनोखा न्याय है जिसके मुताबिक जो सरकारी कागज में दर्ज नहीं वह है ही नहीं। इस तरह आदिवासी की आजीविका के साधन, यहाँ तक की उसकी अस्मिता तक को नकारा जा सकता है।

### भूमि अधिग्रहण की प्रक्रिया का गलत प्रयोग

अगर हम विकास की इस प्रक्रिया को नजदीक से देखें तो कई स्तरों पर उसमें विसंगतियाँ साफ होती हैं। भूमि अधिग्रहण का कानून एक ऐसे जमाने में बनाया गया था जब कि इतनी बड़ी-बड़ी योजनाओं की कभी कल्पना भी नहीं की जा सकती थी। जैसा पहले कहा जा चुका है कि वैसे तो वह कानून ही संविधान की भावना के अनुरूप नहीं है। अगर हम उस कानून को एकबार सही मान भी लें तो भी उसके क्रियान्वयन में कई तरह की अनियमितताएँ साफ हैं। भूमि अधिग्रहण के कानून के अंतर्गत भूमि के अधिग्रहण के लिए दो बातें जरूरी हैं - एक यह कि वह जनहित में होना चाहिए और दूसरा यह कि भूमि के अधिग्रहण के पहले संबंधित व्यक्तियों को अपत्ति प्रस्तुत करने का अधिकार हो। पहले जनहित की बात को ही ले लीजिए जनहित क्या है, यह न भूमि अधिग्रहण कानून में परिभाषित है और न इसको अलग से परिभाषित करने का प्रयास किया गया है। इसका अर्थ यह हुआ कि जो भी सरकार की निगाह में जो जनहित हो वही जनहित है। अगर सरकार कहीं पर सैलानियों के लिए पर्यटन स्थल बनाना चाहती है तो उसके लिए आदिवासी लोगों को बेदखल किया जा सकता है क्योंकि वह सरकारके मत में जनहित में है। इसी तरह से यदि बोधघाट में बिजली बनाने की परियोजना के लिये 4 हजार लोगों को विस्थापित होना पड़े तो वह जनहित में होगा क्योंकि उससे बनाई गई बिजली क्षेत्रीय और राष्ट्रीय विकास के लिए जरूरी है। यहाँ सवाल यह है कि क्या केवल संख्या के आधार पर लोगों के हित और अहित को तराजू पर तौलने को हम जनहित के लिए कसौटी मान सकते हैं ? क्या बहुत लोगों को अशाइशें मिल जायेंगी उसके लिये थोड़े लोगों से उनकी जिंदगी का आधार छीना जा सकता है ? यदि बोधघाट परियोजना बनाने के लिए आदिवासी लोगों को विस्थापित होने के लिए मजबूर होना पड़ेगा तो उसका एक ही अर्थ होगा कि उनसे उनकी जिंदगी का आधार छिन जायेगा। दूसरी ओर वह बिजली आज की नगरीय व्यवस्था में लोगों को नये अशाइशें देने के लिए उपयोगी होगी। मैं नहीं समझता हूँ कि यह विनिमय किसी भी तरह की न्याय की कसौटी पर खरा उतर सकता है।

यही नहीं आज विकास के लिए योजनायें पहले बन जाती हैं, यह तय हो जाता है कि सौ या पचास गाँव की जमीन को ले लिया जाय और उन योजनाओं के निर्माण का कार्य प्रारम्भ तक हो जाता है तब उसके बाद ही फिर जरूरत के मुताबिक जमीन का अधिग्रहण किया जाता है। जब किसी परियोजना के निर्माण का कार्य प्रारंभ हो जाय तो उसके पूरा होने पर पानी तो भरेगा ही, लोगों के घर और जमीन भी डूबेंगे और उन्हें अपनी जिंदगी बचाने के लिये वहाँ से हटना पड़ेगा। उस हालत में जब जमीन का अधिग्रहण एक अनिवार्यता या नियति बन जाती है परियोजना पर काम शुरू करने के बाद लोगों को नोटिस देकर उनसे यह पूछने का कि क्या भूमि के अधिग्रहण पर उन्हें कोई आपत्ति है क्या अर्थ है ? इस तरह की प्रक्रिया कम से कम सामान्य व्यक्ति की समझ के बाहर है। कानून का यह नेमी अनुपालन सही अर्थों में कानून की अवहेलना ही है। इस तरह से वे सब मामले जिनमें सरकार किसी प्रतिष्ठान की स्थापना करने के लिए निर्णय पहले ले लेती है और लोगों को भूमि के अधिग्रहण की प्रक्रिया बाद में प्रारम्भ करती है, उस कानून की मूल चेतना के खिलाफ है। यही नहीं, वह कानून स्वयं संविधान की मूल भावना के अनुरूप नहीं है, उसका उल्लंघन है। कितनी विडम्बना है कि संविधान के लागू होने के 40 साल बाद भी आज तक इस बुनियादी सवाल पर विचार करने तक की किसी को फुरसत नहीं मिली और यह 19 वीं शताब्दी का कानून 21 वीं

शताब्दी में पहुंचने की हड़बड़ी में आंख बंद किए हुए लागू किया जा रहा है बिना यह सोचे कि उस कानून की मंशा भी पूरी हो रही है या नहीं, उसकी संवैधानिकता और मानवीय अधिकारों के संदर्भ में संगतता का सवाल तो अलग ही रहा।

### जीवन के अधिकार की अवमानना

अब अगर हम इस विकास की प्रक्रिया को, जिसमें आदिवासियों के ज़िंदगी का सहारा छीनकर नई व्यवस्था कायम की जा रही है संविधान की व्यवस्थाओं के संदर्भ में देखें तो पायेंगे कि उसमें संविधान की मूलभावना की भी अवहेलना हो रही है। संविधान में जीवन का अधिकार आधारभूत है। यह जीवन का अधिकार केवल संविधान की व्यवस्था की ही बात नहीं है वह एक मौलिक मानवीय अधिकार है। अगर किसी देश का संविधान इस अधिकार की रक्षानहीं करता है तो वह संविधान ही बदलने योग्य है, ऐसा संविधान मानवीय आस्था का संबल नहीं हो सकता है। सौभाग्य से हमारे संविधान में इस बात का पूरा ध्यान रखा गया है - हमारे संविधान में किसी भी व्यक्ति को उसकी ज़िंदगी और उसकी ज़िंदगी के आधार से महसूस करने का अधिकार नहीं है, और इस संदर्भ में जो कुछ आजादी के पहले हुआ या आजादी के बाद हुआ चाहे वह किसी कानून के तहत ही क्यों नहीं हुआ हो संविधान की भावना के खिलाफ है।

यदि हमारा यह तर्क सही है तो यह साफ है कि उन आदिवासी समाजों को, जो संग्रह और आखेट की स्थिति में आज भी जंगलों में रहते हैं, वहाँ से हटाने का किसी को अधिकार नहीं है। हाँ, इसका अर्थ यह कदापि नहीं है कि इन जातियों को उनकी वर्तमान स्थिति में अजायबघर की वस्तु के रूप में रहने के लिए अलग-थलग छोड़ दिया जाय। इसका एक ही अर्थ है कि उन लोगों को विकास के लाभ में इस तरह से सहभागी बनाने की कोशिश की जाय जिससे कि वे अस्मिता न खो बैठें, अपने संसाधनों पर उनके अधिकार तबतक यथावत् बने रहें जब तक कि वे अपनी ज़िंदगी के लिए स्वेच्छा से एक ऐसा नया आधार न बना लें जो मानवीय गरिमा के अनुरूप हो।

मानवीय गरिमा का सवाल बहुत ही अहम है जिसका जिक्र मैं पहले कर चुका हूँ। आज की व्यवस्था साधारण आदिवासी को सभ्यता से दूसरे बसने वाला एक अदना सा अनजान और अज्ञानी व्यक्ति मानता है। इसलिए जब नई व्यवस्था उसको साधारण सी मजदूरी भी मुहैया करती है तो यही समझा जाता है कि उसके साथ बड़ा उपकार किया गया। प्रकृति के सान्निध्य में स्वतंत्र जीवन बिताने वाले समाज का सदस्य अपने को किसी से कम नहीं मानता है, वह अपने को भगवान की एक विशेष कृति मानता है। ऐसे व्यक्ति या समाज को नई व्यवस्था की तलहटी में मजदूरों का दर्जा देकर न्याय नहीं किया जा सकता है। उसकी अस्मिता को स्वीकार करके ही नई व्यवस्था में सहभागी के रूप में स्थापित करने के अलावा और कोई न्याय का मार्ग हो ही नहीं सकता।

जैसा मैं पहले कह चुका हूँ कि वनों पर सरकारी आधिपत्य से आदिवासियों की जीविका के साधन की अवहेलना होती है और उस सीमा तक वह कानून हमारी संविधान की भावना के अनुरूप नहीं है। इसी तरहसे जब भूमि अधिग्रहण के अंतर्गत कुछ सम्ये देकर उससे जमीन ले ली जाती है तो वह भी हमारी संविधान की भावना के अनुरूप नहीं है। ये दोनोंही व्यवस्थाएँ पूरी तरह से असंवैधानिक है। इसलिये जो विकास इन मान्यताओं के आधार पर आगे बढ़ रहा है वह भी संविधान की भावना के अनुरूप नहीं हो सकता। यही नहीं, जिस तरह से भूमि अधिग्रहण कानून को लागू किया जा रहा है वह उस कानून के प्रावधानों के संदर्भ में भी अनुचित है। इसलिए इस पूरी प्रक्रिया को गैर कानूनी कहा जा सकता है।

## भूमि अधिग्रहण और आदिवासी समाज

आदिवासी इलाके के मामले में एक और पहलू भी है। जब बड़ी परियोजनाओं के लिए हजारों एकड़ भूमि का अधिग्रहण किया जाता है तो उसमें खेती की जमीन के अलावा और प्राकृतिक संसाधन भी होते हैं जैसे कि वन और जल के संसाधन। यह सर्वविदित है कि अधिकतर आदिवासी समाज पूरी तरह से खेती पर निर्भर नहीं है। वे अपनी आजीविका के अधिकांश हिस्से के लिए खेती के अलावा दूसरे संसाधनों पर निर्भर हैं। इसलिए जब केवल खेती की भूमि का अधिग्रहण कर उसका मुआवजा देकर लोगों को अपने इलाके से हटने के लिए मजबूर किया जाता है तो खेती के अलावा अन्य संसाधनों से उनके संबंधों को अनदेखा कर दिया जाता है। इस तरह कानून के सीमित दायरे में भी उनके साथ न्याय नहीं होता है। कानून की इस स्पष्ट विसंगति के बारे में अब तक इसीलिए विचार तक नहीं हुआ है क्योंकि हमारी मान्यताओं में प्राकृतिक सम्पदा सरकारी सम्पत्ति है जिन पर लोगों की जायिका के अधिकार को अनदेखा किया जा सकता है।

## व्यक्ति और समाज

बड़ी परियोजनाओं की स्थापना के लिए विस्थापन में एक और बुनियादी कमी भी है जिसकी ओर ध्यान देना जरूरी है। भूमि अधिग्रहण कानून में सभी लोगों को व्यक्ति के रूप में देखा जाता है जिसे उसकी सम्पत्ति मुआवजे की भरपाई कर दी जाती है। आदिवासी समाज में अभी भी समाज से अलग हटकर व्यक्ति की अस्मिता नहीं है। वह अपने को समाज से अलग रहने की स्थिति का स्वप्न में भी नहीं सोच सकता है। इसलिए जब बड़ी योजनाओं की स्थापना के कारण किसी आदिवासी समाज को वह जगह छोड़कर चले जाने के लिये मजबूर होना पड़ता है तो वह समाज टूट जाता है और लोग बिखर जाते हैं। उसके आगे उस व्यक्ति की नियति क्या होती है यह उसको स्वयं नहीं मालूम। इसी कारण अधिकतर आदिवासी विस्थापन के बाद न केवल साधनहीन हो जाते हैं वरन् वे अपनी सामाजिक संज्ञा भी खो बैठते हैं और इस तरह विनाश के कगार पर पहुंच जाते हैं। इस तरह यह साफ है कि भूमि अधिग्रहण कानून, जिसके तहत कार्रवाई के आधार पर आदिवासियों को विस्थापित होना पड़ रहा है, आदिवासियों की आर्थिक सामाजिक स्थिति से संगत नहीं है और उस सीमा तक उसे संविधान की भावना से असंगत कहा जा सकता है।

## संगठित क्षेत्र में जीवन का अधिकार

में यहाँ पर आप लोगों का ध्यान हमारे देश में संगठित क्षेत्र में जो लोग शामिल हो चुके हैं, उनके अधिकारों की रक्षा किस हद तक की जा रही है इसकी ओर दिलाना चाहूँगा जिससे कि उसकी तुलना में यह साफ हो सके कि आदिवासी इलाके में उस अधिकार की अघमानना किस सीमा तक हो रही है। संगठित क्षेत्र में एक बार प्रवेश कर लेने के बाद किसी व्यक्ति को उसमें से हटाना लगभग असंभव सा है। यही नहीं जो व्यक्ति उसकी दहलीज तक पहुँच जाय उसके प्रवेश को रोकना तक असंभव तो नहीं परन्तु कठिन जरूर है। उदाहरण के लिए अभी हाल ही में एक न्यायालय के सामने एक प्रकरण प्रस्तुत हुआ जिसमें कि कुछ व्यक्तियों को 240 दिनों तक दैनिक मजदूरी पर मस्टररोल में रखा गया था। इस मामले में न्यायालय ने यह निर्देश दिया कि इन व्यक्तियों को स्थाई रूप से रखने की व्यवस्था की जाय। कैसी विडम्बना है कि एक ओर हमारी व्यवस्था ऐसे व्यक्तियों को जिसने 240 दिन काम किया हो, उसके आजीवन अधिकार के बारे में चिंताकुल है वहीं दूसरी ओर जो 240 या उससे भी अधिक पीढ़ियों से जिन वनों में रह रहें हों और जिनके लिए वे वन जिंदगी के पर्याय हो, उनके वहाँ से हटने के लिए मजबूर होने पर कहीं किसी ओर से सहानुभूति के दो शब्द ही नहीं निकलते।

## न्याय का अधिकार - आदिवासी के लिये बेमानी

आदिवासी समाजों की रक्षा और उनके कल्याण के संदर्भ में व्यवस्था के दायित्वों की अंत में कुछ विस्तार से चर्चा करना जरूरी होगा. आदिवासियों के लिए विशेष व्यवस्था पर चर्चा करने के पहले कुछ सामान्य व्यवस्था की ओर भी देखना जरूरी होगा. हर नागरिक को न्याय प्राप्त करने का अधिकार है. संविधान के अनुच्छेद 39 ए के अंतर्गत यह व्यवस्था की गई है कि राज्य यह सुनिश्चित करेगा कि देश की विधि व्यवस्था इस तरह से काम करे जिससे कि सभी नागरिकों को समानता के आधार पर न्याय सुलभ हो सके और यह भी सुनिश्चित करे कि कोई नागरिक अपनी आर्थिक कमजोरी या किसी दूसरी कमी के कारण न्याय प्राप्त करने के अवसर से वंचित न रह जाय. आदिवासी समाजों को न्याय मिल सकने में पहली शर्त तो यह है कि वह कानूनी व्यवस्था ही उनके प्रति न्यायपूर्ण है या नहीं यह सुनिश्चित किया जाय. अगर कानूनी व्यवस्था स्वयं अन्यायी है तो उसको न्याय मिलने का सवाल ही नहीं पैदा होता जैसे मैं उमर बार-बार कह चुका हूँ कि जिस व्यवस्था के अंतर्गत आज विकास का आयोजन किया जा रहा है, वह आदिवासी समाज के मौलिक अधिकारों की अघटलना करती है, इसलिए वह न्यायसंगत नहीं है. इसलिए जब ऐसी व्यवस्था के अंतर्गत आदिवासी के प्रति न्याय की बात कही जाती है, जो स्वयं न्यायसंगत न हो तो वह न्याय नहीं हो सकता है, न्याय का परिहास ही हो सकता है.

### संविधान और आजादी के पहले की कानूनी व्यवस्था में विसंगति

आदिवासी क्षेत्रों के संदर्भ में कानूनी व्यवस्था का न्यायसंगत न होने का मामला जिन कानूनों का मैंने उमर उल्लेख किया है, वहीं तक सीमित नहीं है. सच तो यह है कि वह एक गम्भीर सवाल है जिसका संबंध पूरी राष्ट्रीय व्यवस्था से ही है. हमारे देश की मूलभूत कानूनी व्यवस्था आजादी के पहले अंग्रेजों ने बनाई थी जो उन लोगों के मान्यताओं के अनुरूप थी. उसका मुख्य उद्देश्य उसके साम्राज्यवादी हितों को साधना था. हमारे संविधान में समता, न्याय और भर्तृचार के सिद्धांत पर आधारित समाज की संरचना का आदर्श है. इसलिए यह उम्मीद की जा सकती थी कि बहुत से पहले के कानून इस भावना के अनुरूप नहीं होंगे. इसलिए संविधान के अनुच्छेद 372 §2§ में एक विशेष उपबंध किया गया था जिसके तहत राष्ट्रपति को यह अधिकार दिया गया था कि वे आजादी के पहले के बनाये गये किसी भी कानून को संविधान के उपबंधों के अनुरूप बनाने के प्रयोजन से आदेश देकर किसी कानून को निरस्त कर सकते थे या उसमें ऐसे संशोधन कर सकते थे जिससे कि वह विसंगति समाप्त हो जाय. यह विशेष व्यवस्था केवल 3 साल के लिए की गई थी. परन्तु ऐसा लगता है कि इस आधारभूत तथ्य पर कि बहुत से कानून हमारे संविधान की भावना के अनुरूप नहीं हो सकते हैं, समुचित ध्यान नहीं दिया गया. इसकारण वह अक्सर खो गया और आजादी के पहले के कानूनों में जरूरी फेरबदल नहीं किया गया. इसके दुखद परिणाम हमारे देश के कमजोर वर्गों को अब भी उठाने पड़ रहे हैं. असंगत कानूनों के दो महत्वपूर्ण उदाहरण हैं - भारतीय वन कानून और भूमि अधिग्रहण कानून.

जब हम आदिवासी इलाके की स्थिति का अवलोकन करते हैं तो स्थिति और भी खेदजनक है. उनके मामलों में तो कानूनी व्यवस्था में फेरबदल करने के लिए राज्यपाल को खासतौर पर निस्सीम अधिकार दिये गये हैं. परन्तु फिर भी इस ओर कोई ध्यान नहीं दिया गया है. इस कारण वहाँ की कानूनी संरचना ही अन्यायी बनी हुई है और पूरे समाज का अपराधीकरण हुआ है. आदिवासी इस अन्यायी व्यवस्था के सामने लाचार है. इस हालत में कुछ छुटपुट बातों को लेकर न्याय और अन्याय की बात करना असंगत सा लगता है. यह

दुर्भाग्य है कि राज्यपाल तथा अन्य लोगों ने, जिन पर संविधान के अनुसार व्यवस्था चलाने का दायित्व है, संविधान के इन प्रावधानों का अहमियत तक को नहीं समझा. और उनकी इस नासमझी का पूरा बीझ और दुष्परिणाम आदिवासी समाज को भुगतना पड़ रहा है.

### राज्य के दायित्व की अनदेखी

इन विसंगतियों पर ध्यान न दिये जाने का एक और महत्वपूर्ण कारण भी है. राज्य का पहला रूप कानून और व्यवस्था से संबंधित है. इस रूप में उसका मुख्य दायित्व कानून के मुताबिक व्यवस्था को कायम रखने का है. आजादी के बाद नियोजित विकास का रास्ता अपनाने पर राज्य ने एक दूसरा रूप भी अख्तियार किया जिसके अंतर्गत वह स्वयं विकास की प्रक्रिया में भागीदार हो गया. इस दायित्व को पूरा करने के लिए तरह-तरह की संस्थाओं की स्थापना हुई. सार्वजनिक क्षेत्र की ये संस्थाएँ कानून में व्यक्ति के रूप में जरूर हैं परन्तु व्यक्ति के रूप में भी वे राज्य के सभी अधिकारों से लैस हैं. राज्य का तीसरा रूप है कमजोर वर्गों के हितों के संरक्षण का. आदिवासी हितों के संरक्षण के बारे में संविधान ने राज्य पर विशेष रूप से बहुत बड़ी जिम्मेदारी सौंपी है. इस जिम्मेदारी की अहमियत का इसी से अंदाज लगाया जा सकता है कि राज्यपाल को संसद के द्वारा पारित कानूनों तक को निरस्त करने का अधिकार दिया गया है. इसी तरह आदिवासी विकास के लिए जो भी धन की जरूरत हो उसका प्रावधान संविधान की व्यवस्था के मुताबिक अपने आप हो जाना चाहिए और इस मामले में किसी भी तरह की कटौती करने का अधिकार संसद को नहीं दिया गया है.

इन संविधानिक व्यवस्थाओं के बावजूद दुर्भाग्य से एक ओर तो आदिवासी आर्थिक सामाजिक स्थिति को समझने का प्रयास नहीं किया गया और दूसरी ओर उनके अधिकारों की पूरी तरह से व्याख्या भी नहीं हुई. इसके साथ-साथ हमारे देश में विकास की एक ऐसी अवधारणा अपना ली गई जिसमें कि आदिवासी समाज के हितों की बात को कहना उनको अजायबघर की वस्तु के रूप में संजोये रखने की पेशकश मान लिया गया. हमारे विकास की उच्चवर्गीय अवधारणा में गरीबों के साथ जो अन्याय हो रहा है उसे विकास की कीमत कह कर आधुनिकता और प्रगतिवादिता का मुलम्मा चढ़ा दिया गया. इस संदर्भ में क्षेत्र के विकास को भी आदिवासी विकास की संज्ञा मिल गई और आदिवासियों के साथ होने वाले अन्याय को विकास की कीमत मान लिया गया.

### अनदेखी का मूल कारण

अभी तक मैंने औपचारिक कानूनी व्यवस्था के बारे में बातचीत की है. कानूनी व्यवस्था अंतिम विश्लेषण में किसी देश की उस समय की सामान्य धारा को प्रतिबिम्बित करती है. किसी देश या समाज में कानून वहाँ का साधारण मान्यताओं को औपचारिकता का जामा पहनाता है. हालांकि मैं इसके अति-सैद्धांतिक विश्लेषण में यहाँ पर नहीं जाना चाहूँगा, परन्तु इस संबंध में हमारे देश में प्रचलित आम धारणा की ओर इशारा अवश्य करूँगा. हमारे प्रबुद्ध समाज में, जो अपने को देश का पर्याय ही मान बैठा है, सब कोई यह मानता है कि हमारा देश पिछड़ा हुआ है, उसे विकास की जरूरत है. इसलिये जो भी विकास के लिये जरूरी है वह वाजिब है, वांछनीय है. व्यवस्था का यह फर्ज है कि विकास का रास्ता सुगम बनाया जाय जिससे उसकी गति और तेज हो सके. हमारे प्रबुद्ध वर्ग की नजर में देश की वर्तमान स्थिति असम्मानजनक है और विकास के आधार पर ही हम दुनिया के देशों में सम्मानजनक स्थान प्राप्त कर सकेंगे. इसलिये विकास ही देशहित है इसमें किसी तरह की शंका की गुंजाइश नहीं.

आजादी के बाद इसी विकास की भगदड़ में, जिन बुनियादी बातों की ओर मैं इशारा कर चुका हूँ, उनकी ओर किसी को ध्यान देने का मौका ही नहीं मिला. इसके अलावा एक और बात भी हुई. विकास के इस दौर में हमारी अर्थव्यवस्था में नये अवसर पैदा हुए और नईसंघों का निर्माण हुआ. इसलिए उन अवसरों और उस संपदा पर अधिकार की बात स्वाभाविक थी. वैसे जब देश के गरीबों के अधिकारों के बारे में बात

उठती तो हमारा प्रबुद्ध वर्ग तुरंत संसाधनों की कमी की बात करना शुरू कर देता है। सामाजिक न्याय को विकास के हित में दूसरा दर्जा देने की बात सहज ही स्वीकार हो जाती है। इस मामले में बड़े सीधे-सादे ढंगसे कह दिया जाता है कि जब कुछ उत्पादन होगा तभी तो उसको बांटने की बात आयेगी। परन्तु इसी प्रबुद्धवर्ग में विकास के लाभ के बंटवारे को लेकर जो आपसी लड़ाई छिड़ी हुई है, उसके कारण देश में नैतिक, सामाजिक और आर्थिक सभी तरह की अयोग्यता हो रही है उसकी ओर किसी का ध्यान तक नहीं जाता। धन बटोरने और नई संभावनाओं के हाथियाने की धमकाचोकड़ी में न्याय, मूल्य और यहाँ तक कि स्वयं आर्थिक विकास के सीमित उद्देश्य तक को भुला दिया जाता है।

विकास के लिये इस अंधी दौड़ के सिलसिले में सबसे बड़ा सवाल यही है कि आखिर विकास है क्या? क्या भौतिक वस्तुओं के उत्पादन को या ऊर्जा के खपत के स्तर को ही विकास का पर्याय माना जा सकता है। ये सवाल कुछ हल्कों में पहले से भी पूछे जाते रहे हैं। अभी हाल के सालों में इस मामले में खासतौर पर पर्यावरण को लेकर कुछ अधिक गंभीरता दिखाई दे रही है। परन्तु फिर भी आज की हालत यही है कि पश्चिमी देशों के विकास की अवधारणा को ही हमारे देश में जैसी की तैसी स्वीकार कर लिया गया है। इसमें सबसे खेदजनक बात यह है कि पश्चिमी देशों के विकास के ऐतिहासिक संदर्भ को भुला ही नहीं दिया गया बल्कि उसकी ओर जानबूझ कर देखा तक नहीं जा रहा है। सच तो यह है कि उसकी ओर देखने और उस पर गंभीरता से विचार करने से विकास की उन मान्यताओं को ही चुनौती मिल सकती है जो आज विशिष्ट वर्गों के हितों को साध रही है।

पहली और दूसरी दुनिया के देशों में विकास का आधार विज्ञान और तकनीकी क्रांति जरूर थी, परन्तु, उसके साथ कुछ बातें और भी थीं। इन देशों ने अपने घर को रोशन करने के लिए दूसरों के घरों के चिराग बुझा दिए। इन देशों की तरक्की की बुनियाद में पूरी दुनिया के संसाधनों को हाथियाना, दुनिया के कमजोर लोगों का सफाया पुरानी दुनिया की अर्थ व्यवस्थाओं को रौंदकर नई व्यवस्था के लिये बाजारों की स्थापना और पुराने कुशल कारीगरों के हाथ काटकर उनको अकुशल कामगारों की भीड़ बना देना, आदि भी तो शामिल है। इस तरह ऊँचे सिद्धांतों की दुहाई देने वाले पहली और दूसरी दुनिया के देशों के अपने विकास के साथ एक ऐसी तीसरी दुनिया की स्थापना भी जुड़ी हुई है जिनके देशों की अर्थव्यवस्था पर वर्चस्व कायम करते हुए उन देशों ने उपनिवेशवादी व्यवस्था लाद दी। यही व्यवस्था आज भी एक-दूसरे रूप में पूरी दुनिया की अर्थ-व्यवस्था पर हावी है।

### "इंडिया" और "भारत"

अब अहम सवाल यह है कि जब तीसरी दुनिया के विकास के लिए भी पहली दुनिया के प्रतिमान को आदर्श मान लिया जाय तो विकास की दिशा क्या हो सकती है। इस हालत में यह स्वाभाविक होगा कि तीसरी दुनिया में विकास के कुछ द्वीप उभरें जो भौगोलिक रूप से तीसरी दुनिया का अंग हो परन्तु आर्थिक और सामाजिक दृष्टि से ये पहली और दूसरी दुनिया का ही विस्तार या तीसरी दुनिया में पहली दुनिया की आग्रिम चौकियाँ ही हो सकती हैं। इसी को यदि हम तीसरी दुनिया के नजरियों से देखे तो स्पष्ट होगा कि तीसरी दुनिया में पहली दुनिया का अनुकरण करने वाले एक ओर उसमें अपने लिये अपने सपनों की एक नई दुनिया बना रहे हैं। परन्तु उसके साथ ही दूसरी और पहली दुनिया की ऐतिहासिक परंपरा के समानान्तर एक चौथी दुनिया की स्थापना भी करते जा रहे हैं और देश के इस विभाजन को विकास की संज्ञा दी जा रही है।

यह एक दुखद वास्तविकता है कि हमारा देश आज दो देशों में विभक्त हो गया है। एक उन दो करोड़ आसूदा लोगों का देश है जो विकास के प्रतिमानों के लिये दुनिया से होड़ कर रहा है। इसी नये देश के लिये ये दम भरी उक्तियाँ कहीं जा रही हैं कि वह अब योरोप के किसी भी देश से पीछे नहीं है। परन्तु दूसरी ओर उन बहुसंख्यक लोगों का "पुराना देश" भी है जहाँ जिंदगी का आधारभूत जरूरतों को पूरा करने के

लिये भी कठोर संघर्ष लोगों के लिये आम बात है। इस तरह "इंडिया" और "भारत" ये दो अलग-अलग देश बन गए हैं। मुझे खुशी है कि इस द्विभाजन की वास्तविकता को लोग धीरे-धीरे पहचान रहे हैं, उसमें अन्तर्निहित अन्याय को अस्वीकार किया जा रहा है, उसके प्रति आक्रोश भी है। यह सुखद बात है कि भारत अब इंडिया से बराबरी का दावा कर रहा है। इससे सामाजिक न्याय के हित में अच्छे परिणामों की अपेक्षा की जा सकती है।

### "भारत" में एक "हिन्दुस्तनवा" भी

"भारत" में भी एक अलग दुनियां जिसे "हिन्दुस्तनवां" कहा जा सकता है परन्तु यह "भारत" भी तो एक नहीं है। दिडम्बना यह है कि तथाकथित "इंडिया" का "भारत" के प्रति जैसा व्यवहार है ठीक वही व्यवहार इस "भारत" का "हिन्दुस्तनवां" के प्रति है। सामाजिक न्याय के बारे में "इंडिया" की तरह उसका भी वही तर्क है कि पहले विकास, बाद में सामाजिक न्याय संभव है। "भारत" के सदस्यों के पास भू-संपदा है। और वे ही लोग अपने इलाके के सभी प्राकृतिक संसाधनों पर अपना अधिकार और भी तेजी से बढ़ाते जा रहे हैं। विज्ञान और तकनीकी के नये साधनों का उपयोग करके वे गांव की आर्थिक व्यवस्था पर अपनी जकड़ और भी मजबूत करते जा रहे हैं। इस "भारत" में भी समृद्धि के नये टापू बनते जा रहे हैं। परन्तु उन समृद्ध टापुओं में भी "हिन्दुस्तनवां" की हालत जैसी की तैसी बनी है। इससे यह जाहिर है कि सामाजिक न्याय की स्थापना सीढ़ी-दर-सीढ़ी नहीं हो सकती है। सामाजिक न्याय की एक ही कसौटी हो सकती है और वह है सबसे गरीब व्यक्तियों के अधिकारों की मान्यता और उनकी मान्यता।

इस तरह हमारे देश में पहली दुनिया से लेकर चौथी और पांचवी दुनिया एक साथ अवस्थित हैं। यही नहीं, उनके बीच की दूरी तेजी से बढ़ती जा रही है। हमारे देश की व्यवस्था में "इंडिया" "भारत" और "हिन्दुस्तनवां" का यह तिहरा स्तरण दिनों दिन पुख्ता होता जा रहा है। "हिन्दुस्तनवां" की पांचवी दुनिया के रहवासियों में एक ओर वे सर्वहारा और दलित शामिल हैं जिनका पहले ही सब कुछ छिन गया है, परन्तु उसी में दूसरी ओर वह आदिवासी समाज है, जिनका विकास के नाम पर सब कुछ छिनता जा रहा है। आदिवासी समाज की पीड़ा और उनके संघर्ष को इसी संदर्भ में समझना जरूरी होगा। यह एक ऐसी कुत्सित वास्तविकता है जो हमारी मान्यताओं और हमारे आदर्शों की ही नहीं बल्कि हमारे संविधान की भी खुली अवमानना है।

### लोग क्या करें ?

आदिवासी समाज आज अपने इतिहास में एक बड़े गंभीर मोड़ पर हैं। आदिवासी क्षेत्रों के विकास की प्रक्रिया एक ऐसे दौर में पहुँच चुकी है जहाँ आदिवासी समाज का भविष्य और उसकी अस्तित्व पर ही प्रश्नवाचक चिन्ह लग गया है। देश, क्षेत्र या अंचल के विकास के लिये कानून के तहत उन लोगों का तेजी से विस्थापन हो रहा है। विस्थापन की यह प्रक्रिया उस कानून के मान से भी, जिसके तहत उनके संसाधन छीने जा रहे हैं, गैर-कानूनी हैं। यही नहीं, स्वयं वह कानून हमारे संविधान की व्यवस्था के खिलाफ है। इसके आगे यदि इससे भी ऊँचे स्तर पर हम उस प्रक्रिया पर विचार करें तो स्पष्ट रूप से वह उनकी मानवीय अधिकारों की अवहेलना है। इस विकास की खातिर आदिवासी इलाकों में कितने लोग विस्थापित होंगे और क्यों ? कितने समाज टूटेंगे और किसलिये ? आज ये अहम सवालतात हैं जिन पर गंभीरता से विचार की जरूरत है।

विकास का यह विनाशकारी रूप साधारण आदिवासी को स्वीकार नहीं है। यह दुर्भाग्य है कि वह इस पूरी प्रक्रिया की पेचीदगी को समझ नहीं पा रहा है। वह अपने तौर से उसका प्रतिरोध कर रहा है। परन्तु

यह जिस भाषा में और जिस तर्ज में बोलता है वह हमारी व्यवस्था के लिये बेमानी है। हमारी व्यवस्था व्यापक छिंटों की बात करती है, कानून की दुहाई देती है परन्तु भूल से भी संविधान और मानवीय अधिकारों की बात नहीं उठाती। मेरे विचार में इस खेदजनक स्थिति का जड़ में आदिवासी इलाकों में स्थानीय व्यवस्था की अवमानना और प्राकृतिक संसाधनों पर लोगों के अधिकार की अमान्यता है विडम्बना यह है कि दुनिया के सबसे बड़ा प्रजातंत्र में भी प्रजातंत्र का नेमीरूप ही प्रधान है। आदिवासी इलाकों में लोग अपनी व्यवस्था स्ययं करने के अधिकार की लड़ाई लड़ रहे हैं। उनका कहना यह है कि मद पिये या न पिये इसका निर्णय करने का हक उनके समाज का है। जमीन किसकी है वह समाज ही तय कर सकता है। जमीन और जंगल से उनकी मां और बेटे जैसा संबंध है, उनको अपनी मां से किसी भी हालत में कोई भी अलग नहीं कर सकता है। यहाँ कानून की बात नहीं है। यह तो प्रकृति का नियम है। यदि कानून उसके खिलाफ है तो उनका यह रिश्ता गलत नहीं है, वह कानून गलत है। इस कानून का संशोधन होना चाहिए। यही हमारे संविधान की मान्यता है। यही संरक्षण संविधान में आदिवासी समाज को दिया गया है।

हां, यह जरूर है कि जैसे आदिवासी लोग प्रशासन की व्यवस्था को नहीं समझते, वे लोग बाहरी लोगों के दूसरे दांव पेचों को भी नहीं समझ पाए। इसलिये राज्य का कर्तव्य है कि वह उन समाजों को बाहर के आक्रमण से बचाये न कि उनके अपनी सामाजिक व्यवस्था में दखलंदाजी कर उसको नष्ट-भ्रष्ट करे। उदाहरण के लिए वन्य प्राणी संरक्षण अधिनियम में धनुष और बाण तथा बंदूक को एक साथ समेट कर पेश किया गया। धनुष और बाण आदिवासी जीवन का एक अंग है, वह उसका कवच है। कर्ण की तरह आदिवासी उस कवच के साथ पैदा हुआ था। उससे उसका वह कवच नहीं छीना जा सकता। यदि वह कवच छिन जाता है तो उसका जीवन का अधिकार भी छिन जाएगा। वन्य प्राणियों का संहार बंदूक ने किया। धनुष और बाण ने मानव जीवन की रक्षा की और उसे सहअस्तित्व के योग्य बनाया। पर आज हमारे कानून में आदिवासी को जंगल में धनुष-बाण लेकर जाने की मनाही है। यह मानवीय अधिकारों की उपेक्षा है।

हमारी व्यवस्था की ये सभी विसंगतियाँ तत्काल समाप्त होना चाहिए। ऐसा लगता है कि व्यवस्था के कर्णधार इसको समझने की कोशिश तक नहीं कर रहे हैं। मुझे उम्मीद है कि वे कम से कम प्रजातंत्र के मूलभावना को तो समझेंगे इसमें एक बात तो अटल सत्य है और वह यह कि सभी तरह के अधिकारों का स्रोत प्रजातंत्र में लोग हैं। अंत में सब कुछ जनमत से संचालित होता है। बस्तर के जंगलों में लोग कह रहे हैं "मावा माटी, मावी सरकार-" क्या व्यवस्था उनकी इस उद्घोषणा का आदर करेगी ? जिस तरह हम लोकमान्य तिलक की उद्घोषणा "स्वतंत्रता हमारा जन्म सिद्ध अधिकार है" को बड़े गर्व के साथ याद करते हैं, क्या हम उसी तरह जन सामान्य के स्तर पर उनकी इस भावना का आदर करेंगे कि हमारे गांव में हमारी सरकार है ? क्या हम गांधी जी के सपनों के ग्राम स्वराज की स्थापना करके लोगों को खास आदिवासी लोगों को प्रतिष्ठा और स्वाभिमान के साथ जिंदगी चलाने के लिए उपयुक्त वातावरण और समुचित व्यवस्था का निर्माण करेंगे ? अगर व्यवस्था इस चुनौती को स्वीकार नहीं करती है तो लोगों का यह अधिकार है कि वे अपनी व्यवस्था स्वयं करें।

अंत में, मैं आग्रह करूंगा कि इस परिसंवाद में हम इन बुनियादी सवालों पर विचार करें। जीवन का अधिकार पवित्र है, उसकी अवहेलना नहीं की जा सकती। किसी भी व्यक्ति की आजीविका के साधन को चन्द स्मये देकर उससे छीना नहीं जा सकता। कानून कुछ भी कहे इसका संविधान में किसी को अधिकार नहीं है। किसी भी समाज को विकास की कीमत चुकाने के लिये मजबूर नहीं किया जा सकता। यह विकास की विनाशकारी और अन्यायी व्यवस्था है। इसको बदलना होगा। जन सामान्य की भावनाओं का आदर ही नहीं उसे लोक आदेश मानकर उसका अनुपालन करना होगा। तभी हम अपने देश को इंडिया, भारत और हिन्दुस्तानों के तिहरे स्तरण से बचा सकेंगे। यही हमारी सभ्यता की गुणवत्ता भीष्मली कसौटी होगी।

Resolution and Declaration

On this sacred day, the Father of our Nation had established the great democratic right of the people to rise against injustice and to declare an inequitous system as unacceptable. He had broken the salt law which violated the right to live. We today feel that the great task undertaken by Gandhiji has remained incomplete. The British had forced on our nation a colonial legal system which was violative of the basic value frame of our society and the basic rights of the people. After Independence, we gave unto ourselves a Constitution with the clear objective of establishing a socialist republic. It was expected that the Colonial legal system will be changed and will be moulded in accordance with the democratic values. This task has not been even undertaken.

All natural resources including land provide basic sustenance to the ordinary people and are, therefore, their means of livelihood. The existing laws concerning natural resources including land are based on two faulty premises:

- (i) that there are no community rights on land - this premise is contrary to the lived experience of people where forests, water etc. have traditionally been Common Property Resources (CPRs) crucial to subsistence; and
- (ii) that even individual rights can be abrogated and taken over by the State at will under the name of "development", "national interests" etc.

These premises are at the root of massive displacement and pauperisation of large sections of the population through mega projects.

The Land Acquisition Act 1894 and other laws governing resource use were promulgated by the British when India was their colony. These laws are totally inappropriate in the present context.

Moreover, land in our country has also been perceived as Mother. That is a sacred relationship. This law is not only against the spirit of the Constitution but is violative of human rights as also our sacred tradition.

Therefore, today, April 13th, 1990 we, the representatives of various organisations based in different tribal and other regions of the country, exercising our authority as citizens of India, after full consideration of the fact that this colonial unconstitutional law is violative of human rights and our sacred tradition, hereby solemnly resolve and declare the same as unacceptable and invalid. As from this day, no action under this invalid law will be acceptable to us.

